

STREET
IMPROVEMENT ACTS
OF CALIFORNIA
1925

C. M. Kane

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**Street Improvement Bond
Conforming with the
Improvement Bond Act of 1915**

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Enlarged and Revised Edition

STREET IMPROVEMENT ACTS OF CALIFORNIA

(including Amendments of 1925)

Compiled by
WM. J. LOCKE
Executive Secretary
League of California Municipalities



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of California
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Clearly annotated throughout for quick reference.

Court Decisions showing latest rulings.

The Road Laws embracing the provisions of the constitution, code sections and special statutory acts relating to highways, bridges, etc., outside municipal corporations, are published in a separate volume entitled "Road Laws of California" by A. CARLISLE & CO.

List of forms under Improvement Act of 1911 and
Improvement Bond Act of 1915, set out on
back pages of this book

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A WORD ON STREET IMPROVEMENT

As California leads the States of the Union in creating better State Highways, it is natural that the Cities and Towns should follow this plan of progress by improving streets within their incorporated limits.

Our laws set forth the method of procedure for this improvement, but do not devise the various forms, records, blanks or bonds, which must necessarily be correct to meet the legal approval of the examining attorneys for both the contractor and bond buyer.

The forms as originated and devised for A. Carlisle & Co. have been handled by attorneys well versed and with long experience in street improvement laws.

The numerous street proceedings with the use of our various forms in their entirety that have been consummated to a successful conclusion without legal trouble of any kind speaks well for them. Our experience backed by our pleasant connections with Attorneys, Contractors, Bond Houses and Street Improvement Experts, permits us to help you on all matters pertaining to street improvement.

We solicit your inquiries and will gladly lend our assistance for the solution of your problems. We assume all responsibility for the correct interpretation of your bond resolution, and will deliver legally correct issue of bonds, in conformity with your resolution.

PRELIMINARY REQUIREMENTS

The Records or Minutes.

See that the city's records have been kept correctly and are in proper order. In case any proceedings have been taken at adjourned meetings see that the hour of adjournment has been specified in the minutes of the previous meeting.

Public Streets and Rights of Way.

Only public streets, or rights of way owned by the city, may be improved. Section 79 (sub. 7) of the 1911 act defines public streets as those which have been dedicated and accepted according to law or have been in common and undisputed use for at least five years. Proceedings should never be started while any question remains as to the legal status of the streets or rights of way proposed to be improved. However, under Section 26 of the 1911 act, a proceeding will not be declared invalid if the dedication is made and accepted or the public streets or right of way lawfully acquired at any time before judgment is entered in a suit involving the proceedings.

City Base or Datum Plane.

Before street improvement proceedings are started some well known point of established elevation should be selected to serve as a base for establishing the street grades, if this has not already been done. This base is established officially by resolution or ordinance, after which it is known as the city base or datum plane. Where there is a U. S. G. S. bench mark in the city, it may be used as a base.

Grades of Streets.

The official grades may be established by a resolution specifying the elevations at different points along the streets and providing that the grades shall be on a straight line between each of the points consecutively. The grades may be established on the curb line, property line or center line of the street. A good plan is to prepare and adopt a grade map showing the curb lines, including the return arcs at intersecting streets and alleys, together with the elevations at various points thereon, and declaring the official grades shall be uniform between the points indicated.

Change of Grade.

Heretofore, when the official grade was once established it could not be changed except by an elaborate proceeding involving the posting and publication of special notices and the loss of considerable time, but the act was amended by the 1921 legislature so as to enable a change of grade by specifying the proposed change in the resolution of intention.

Plans and Specifications.

It is necessary to adopt plans and specifications in all cases before passing the Resolution of Intention. They must be definite and complete in all particulars, and not leave anything to the imagination or the discretion of any of the officials. Care should be taken to see that plans and specifications agree with each other and with the Resolution of Intention in every particular.

Bond of Street Superintendent.

Section 38 of the 1911 Act requires the street superintendent to give bonds, and this should be done before proceedings are commenced, unless he is already under bond.

The District Plan.

It is generally conceded that the district plan for assessing the cost of an improvement is much better and safer than the so-called frontage plan and, except for the simplest kind of a proceeding, it is urged that a district be provided even though it be confined to the lots fronting on the improvement.

SYNOPSIS

of the

IMPROVEMENT ACT OF 1911.

The first proceeding to be taken after the adoption of plans and specifications is the passage of a Resolution of Intention which should contain the following provisions:

1. The name of the street or streets to be improved and a description of the work to be done.
2. Excepting work already done, if any.
3. Excepting railroad work, if any.
4. Reference to the plans and specifications adopted.
5. Reference to the License Agreement if patented processes or apparatus are to be used.
6. Description of district, if done under the district plan together with a declaration that it is the district benefited.
7. Description of public property, if any, to be excepted from district. If not excepted, specify the fund out of which to be paid. (See Sec. 20, Sub. 8.)
8. Reference to fund out of which partial expense may be paid by city. (See Sec. 40.)
9. Designation of bond act to be used, if any, giving term of bonds and rate of interest.
10. Reference to act under which proceedings are taken.
11. Notice of day, hour and place for hearing protests.
12. Direction to clerk to publish and designation of newspaper.
13. Direction to street superintendent to post notices and instruction to clerk to mail copies of same if thought advisable. (See Sec. 5.)

Passage of the Resolution of Intention should be recorded in the minutes, naming the streets and referring to the resolution by number or in such a way as to clearly identify it.

The resolution of intention must be published twice in a newspaper which must be designated by the council for the publication of all the notices, resolutions, orders and other matter required to be published, in relation to the proposed work and improvement. (See Sec. 79 (4).) A daily newspaper must be designated if there be one published in the city.

In all subsequent notices, resolutions or other proceedings requiring a description of the work and other declarations, it is advisable for safety and economy to use a printed clipping from a published copy of the Resolution of Intention.

NOTICE OF IMPROVEMENT (Sec. 5).

After the passage of the Resolution of Intention the street superintendent should print notices and have them posted along the line

of the proposed work and on every street in the district. They must comply with the following requirements:

1. Be headed "Notice of Improvement" in letters at least one inch in height.
2. Give notification of the passage of the Resolution of Intention and its contents.
3. Contain a statement of the day, hour and place for hearing protests.
4. Refer to the Resolution of Intention for further particulars.
5. Be posted less than 300 feet apart, and in no case less than three in all.
6. Be posted at least ten days before the day set for hearing protests.

PROTEST AND HEARING (Sec. 6).

Up to the hour set for hearing protests any owner liable to be assessed may file written objections to the work or extent of the district and deliver them to the city clerk.

1. No other protests shall be considered.
2. If protests are made by a majority (in feet) of the frontage, or a majority (in area) of the district, in case of district, the council shall so find and then abandon further proceedings for six months; provided that in case of work done under the district plan the council may overrule objections by a 4/5 vote and proceed with the work.
3. In case protests have been filed and they are overruled, a resolution should be passed to that effect, followed by a resolution ordering the work.

RESOLUTION ORDERING THE WORK (Sec. 10).

If no protests are filed, or in case protests have been filed and overruled, the council shall proceed by passing a resolution ordering the work, which resolution shall contain the following provisions:

1. A general statement of the proceedings so far taken, including (a) a declaration that a Resolution of Intention was duly passed and published and notices duly and regularly posted, (b) a description of the proposed work and other matters contained in the Resolution of Intention.
2. Reference to the Resolution of Intention for further particulars.
3. The time fixed for opening bids, which shall be not less than ten days from the time of the first publication or posting of the notice inviting sealed proposals.
4. A direction to the clerk to post "Notice Inviting Sealed Proposals" with specifications, for five days on or near the chamber door.

5. A direction to the clerk to publish such notice twice, and designating the newspaper for that purpose. It must be a daily newspaper if there be one.

Should the council desire the work to be done under the supervision of the engineer or the assessment to be made by the engineer instead of the street superintendent, they should pass a resolution to that effect as provided in Sec. 18.

RECEIVING BIDS

At the time set for opening bids, all proposals must be publicly opened and publicly declared, and the contract must be awarded to the lowest responsible bidder whose proposal and accompanying check or bond is in proper form. The list of bidders and the aggregate amounts of each of their respective bids, should be set forth in the minutes.

The council should then take action on the bids, unless they are all rejected, by passing a

RESOLUTION OF AWARD

containing the following:

1. A general statement of the proceedings so far taken, including a description of the work and all other matters set forth in the Resolution of Intention, referring to the Resolution of Intention for further particulars.
2. The name of the successful contractor, and a reference to the prices.
3. A direction to the clerk to post and publish a

NOTICE OF AWARD OF CONTRACT

which must contain:

1. Notice that bids were publicly opened and publicly declared on a certain day (giving same) for doing the work described in the Resolution of Intention (setting forth all matters incorporated in the Resolution of Intention).
2. Referring to the Resolution of Intention for further particulars.
3. A statement that the contract was awarded on a certain day (mentioning same) at the following prices: (Here set forth prices.)

CONTRACT

Section 12 of the 1911 Act provides that three-fourths of the property owners, according to frontage, within ten days after the first publication of the Notice of Award, may enter into a written contract to do the work at the prices for which it was awarded to the successful bidder, who is prohibited from entering into the contract before this ten-day period elapses. However, he is obliged to do so within fifteen days thereafter. (See Section 13.)

It is a wise precaution to prepare the contract and bonds immediately after the award so that the contractor will have time to execute them and obtain his bonds. The contract should contain:

1. Reference to the award.
2. Description of the work as set forth in the Resolution of Intention.
3. Time for starting work and its completion.
4. The prices to be paid for the work according to the contractor's bid.
5. Statement that the work is to be done to the satisfaction of the street superintendent or engineer as the case may be.
6. Notice of non-liability of city or its officers.
7. Eight hour clause and two dollar per day minimum.

AFFIDAVITS

In all cases of posting and publishing, affidavits must be filed with the clerk setting forth a statement of the facts, together with the dates and periods over which the posting or publishing took place. In case of posting the affidavit must be made by the person actually doing the posting. (Section 79, Sub. 4.) A copy of the resolution or notice, as the case may be, should be attached or annexed to the affidavit in each case.

WM. J. LOCKE

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LIST OF FORMS SET OUT IN BACK PAGES OF THIS BOOK

IMPROVEMENT ACT OF 1911

An act to provide for work in and upon streets, avenues, lanes, alleys, courts, places and sidewalks within municipalities, and upon property and rights of way owned by municipalities or of which a municipality has possession and the right of use under the provisions of section fourteen of article one of the constitution, and for establishing and changing the grades of any such streets, avenues, lanes, alleys, courts, places, sidewalks, properties or rights of way, and providing for the issuance and payment of street improvement bonds to represent certain assessments for the cost thereof, and providing a method for the payment of such bonds. (Title amended, Statutes 1925, Chap. 105.)

Approved April 7, 1911, Statutes 1911, p. 730. (Amended 1913, 1915, 1919, 1921, 1923 and 1925.)

PART I.

Public streets defined.

1. All streets, lanes, alleys, places or courts, in the municipalities of this state now open or dedicated, or which may hereafter be opened or dedicated to public use, or any property for which an order to take immediate possession and use of a right of way thereover for a public use, has been obtained from a court of competent jurisdiction in any action in eminent domain or proceeding for the laying out, opening, extending, widening or straightening in whole or in part of any public street, square, lane, alley, court or place in compliance with the provisions of section fourteen of article one of the constitution of the State of California, shall be deemed and held to be open public streets, lanes, alleys, places or courts, for the purpose of this act, and the city council of each municipality is hereby empowered to establish and change the grades of said streets, lanes, alleys, places or courts, and fix the width thereof, and is hereby invested with jurisdiction to order to be done thereon any of the work mentioned in this act under the proceedings hereinafter described. (As amended Statutes 1925, Chap. 105.)

Torrens Land Title Law.

Section 95 of the Torrens Land Title Law (Stats. 1915, p. 1932) applies only to the memorial of statutory or other liens elsewhere mentioned in the act. *Rutledge v. Eureka*, 69 Cal. Dec. 169.

For definition of street, see Section 79, subdivision 7.

Accepting dedication.

The filing and recording of a map showing streets is merely an offer of dedication; there

must be a showing that the public authorities accepted the streets either by user or some formal acceptance within a reasonable time. *Wolfskill v. County of Los Angeles*, 86 Cal. 405. (See Section 79 hereof, seventh paragraph.)

Using a street for park purposes.

A city cannot set aside a portion of a street for parking purposes except by going through the legal proceedings for abandoning such portion. *Keller v. City of Oakland*, 54 Cal. App. 169.

What work may be done.

2. Whenever in the opinion of the city council the public interest or convenience may require, it is hereby authorized and empowered to order the whole or any portion or portions, either in length or in width, of any one or more of the streets, avenues, lanes, alleys, courts, places, public ways of any such city, or property, or rights of way owned by any city, to be improved by or to have constructed therein

either singly or in any combination thereof, any of the following, namely:

(a) The grading or regrading, the paving or repaving, the plank-ing or replanking, the macadamizing or remacadamizing, the graveling or regravelling, the oiling or reoiling thereof.

(b) The construction or reconstruction of sidewalks, cross-walks, steps, parks and parkways, culverts, bridges, curbs, gutters, tunnels, subways or viaducts.

(c) Sanitary sewers or instrumentalities of sanitation, together with the necessary outlets, cesspools, manholes, catch basins, flush tanks, septic tanks, disposal plants, connecting sewers, ditches, drains, conduits, tunnels, channels or other appurtenances.

(d) Drains, tunnels, sewers, conduits, culverts and channels for drainage purposes; with necessary outlets, cesspools, manholes, catch basins, flush tanks, septic tanks, disposal plants, connecting sewers, ditches, drains, conduits, channels and appurtenances.

(e) Poles, posts, wires, pipes, conduits, tunnels, lamps and other suitable or necessary appliances for the purpose of lighting said streets, avenues, lanes, alleys, courts, places or public ways of any such city or property or rights of way owned by any such city.

(f) Pipes, hydrants and appliances for fire protection.

(g) Breakwaters, levees, bulkheads and walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places, public ways and other property in any such city, from overflow by water.

(h) Wells, pumps, dams, reservoirs, storage tanks, channels, tunnels, conduits, pipes, hydrants, meters or other appurtenances for supplying or distributing a domestic water supply.

(i) Retaining walls, embankments and other structures necessary or suitable in connection with any of the work mentioned in this section.

(j) All other work which may be deemed necessary to improve the whole or any portion of such streets, avenues, lanes, alleys, courts, places, public ways or property or rights of way owned by such city.

(k) All other work auxiliary to any of the above, which may be required to carry out the same. (As amended Statutes 1923, p. 104.)

Plans and specifications.

Although not expressly required by the language of the act, it is necessary to have plans and specifications adopted before passing the resolution of intention, except the proposed work is so simple as not to require them, in which case the description of the work in the resolution of intention should be most complete.

Right of way.

Rights of way should be obtained before commencing proceedings, but a proceeding will not be declared invalid if the right of way is lawfully acquired at any time before judgment is entered in a suit involving the proceeding. The cost of a right of way cannot be included as one of the incidental expenses of the work.

Rights of way outside city.

Under the 1911 Act a city may construct appurtenances to a sewer system such as septic tanks on a right of way outside the city limits. *Federal Construction Company v. Ensign*, 59 Cal. App. 200.

Official grade.

Be sure that the official grade has been properly established. Fixing the official grade at two points does not fix it "between such two points as being an arbitrary straight line between such points so established." *Dorland v. Bergson*, 78 Cal. 640. Grading to the official "sub-grade" is valid. *Palmer v. Burnham*, 120 Cal. 364.

In case the official grade has been changed, see that it was done in accordance with law. "Changing the grade after passage of the

resolution of intention invalidates the contract and assessment."—*Warren v. Chandos*, 115 Cal. 382.

Tunnels.

Neither the Vrooman Act nor Section 2 of the Act of 1911 authorize the City Council to levy an assessment for the construction of a tunnel to be used as a part of a public street for travel: only tunnels for drainage and sanitary purposes are authorized. *Thompson v. Hance*, 174 Cal. 572.

More than one street.

Several streets may be improved in a single proceeding. *Remillard v. Blake & Bilger Co.*, 169 Cal. 277.

Initiative and referendum.

Street work proceedings are not subject to the initiative and referendum. *Chase v. Kalber*, 28 Cal. App. 561.

Resolution of intention.

3. Before ordering any work done or improvement made which is authorized by this act, the city council shall pass a resolution of intention to do so, referring to the street by its lawful or official name, or the name by which it is commonly known; when the work is not upon a public street or public way, then by briefly describing the property or right of way on which same is to be constructed, and briefly describing the work. The said resolution of intention shall be sufficient if it states in general terms the class or kinds of work contemplated such as grading, paving, sewerage or other work or improvements, and gives in general the location of the proposed improvement and refers to plans, profiles, detailed drawings and specifications or such of them as may be suitable or proper for the full and detailed description of the said proposed work or improvement. Said resolution shall contain also a notice of the day, hour and place when and where any and all persons having any objections to the proposed work or improvement may appear before the legislative body and show cause why said proposed improvement should not be carried out in accordance with said resolution; said time shall not be less than fifteen nor more than forty days from the date of the passage of said resolution. The city clerk shall cause said resolution of intention to be published twice in one or more daily newspapers published and circulated in said city; *provided*, if there be no daily newspaper, then the publication shall be made in one or more newspapers published and circulated therein less than six days a week, and said publication shall be had twice therein. If no newspaper be published in said city, then the publication shall be made twice in some newspaper published in the county in which said city is located. The city council may include in one proceeding, under one resolution of intention and in one contract, any of the different kinds of work mentioned in this act on any number of streets, properties and rights of way or portions thereof, contiguous or otherwise, and it may except therefrom any of said work already done. The lots and portions of lots fronting upon said excepted work already done shall not be included in the assessment for the class of work from which the exception is made.

Construction of Public Health Act.

The 1911 Act provides fully for the construction of sewers, whereas the Public Health Act relates only to their use. In the matter of *Joe Chutuk*, 192 Cal., page 60.

Public Interest or Convenience.

In an action against the board of trustees of a town to set aside proceedings and contract for street improvements, the judgment of the board that the public interest or convenience required the improvement, based on evidence before it, in the absence of fraud or arbitrary action amounting to fraud, cannot be set aside because a protestant believes that from the evidence by him adduced the board should have come to a different conclusion. *Hanson v. The Board of Trustees of the Town of Mill Valley*, 47 Cal. App. Dec. 131.

The grade to which any work shall be done or improvement made shall be such as may be shown on the plans or profiles therefor or it may be done on such a grade as may have been formally established by the city council. If any official grade has already been adopted or established for any of the streets, avenues, or other places or property, proposed to be improved, it shall be lawful for the resolution of intention to provide that said work shall be done to new grades or grades different from those so established or adopted, and shall refer to plans, profiles or specifications for the description of the grade at which the work is to be done. Any property owner whose property is to be assessed to pay the costs and expenses of the proposed improvement may at the time fixed in the resolution of intention for hearing of objections to the proposed work and improvement, appear before the city council and make objection to the proposed grade or proposed modification of grade. A failure to make objection at such time shall be deemed to be a waiver of all objections to the proposed grade or proposed change or modification of grade and shall operate as a bar to any claim for damages or any subsequent action looking to the prevention of the work or the recovery of damages on account of the performance of the work to such grade or changed grade. The provisions of this section relative to grades are alternative and shall not repeal other provisions of this act or other statutes relative to change of grade. (As amended Statutes 1923, p. 106.)

Names of streets.

The resolution of intention may refer to the streets by the names by which they are commonly known. *Federal Const. Co. v. Kneese*, 37 Cal. App. 659.

"Briefly."

The work may be described in "full" instead of briefly. *McCaleb v. Dreyfus*, 156 Cal. 204.

Resolution of Intention.

The general description of the work must be read in conjunction with the plans and specifications. *Walsh v. Swanson*, 64 Cal. App. 587.

Description of the work.

Plans and specifications when prepared must conform to and be consistent with the description in the Resolution of Intention. *Ferry v. O'Brien*, 188 Cal. 629.

The resolution of intention should describe in general terms, the number, size, location and material of the various classes of the proposed improvements, and refer to the specifications for particulars as to each class. An omission of any one vitiates the resolution as a whole and makes void the contract and assessment based thereon. *Bay Rock Co. v. Bell*, 133 Cal. 150.

The description in the resolution must be certain, though not required to be as minute and precise as would be proper in the plans and specifications; if plans and specifications are required they must conform to and be consistent with said description. *Fay v. Reed*, 128 Cal. 357.

A resolution of intention which announces as part of the proposed work "suitable drains and inlets to be constructed at all intersecting crossings, etc.," without specifying the number of drains or inlets or their size or the materials of which they are to be constructed,

is fatally defective. *Fay v. Reed*, 128 Cal. 357.

Specifications may call for either iron or steel culverts. *Shepherd v. Chapin et al.*, 45 Cal. App. 645.

A resolution of intention where the work proposed to be done is described as merely "to sidewalk and curb" without specifications of the character of the materials to be used, is void. *Crouse v. Barrows*, 156 Cal. 154.

A resolution describing the work as "grading and macadamizing" is sufficient to authorize re-grading and re-macadamizing where part of the street has already been graded and macadamized. *Wells v. Wood*, 114 Cal. 255.

Under a resolution of intention that granite curbs be laid where not already laid on a certain street, the abutting property cannot be assessed for the cost of removing the curb in front of such property and re-placing it with a new curb. *City Street Improvement Company v. Taylor*, 138 Cal. 364.

A resolution stating that "whatever old crosswalks exist, and are taken up, they shall become the property of the street superintendent is not objectionable." *King v. Lamb*, 117 Cal. 401.

A resolution of intention to pave a street includes the gutterways unless a different kind of work is indicated for the gutterways. *City Street Imp. Co. v. Taylor*, 138 Cal. 364.

A resolution of intention which describes the proposed work as "granite or artificial stone curbing" is insufficient to confer jurisdiction on the board to order the work done. *San Jose Imp. Co. v. Auzerais*, 106 Cal. 498.

The fact that the location of a concrete catch basin to be constructed was to be determined by the city surveyor is not material. *Burns v. Casey*, 13 Cal. App. 154.

The resolution of intention for macadamizing calling for "such rock as shall be approved by the board of trustees" is insufficient to

give the board jurisdiction to let the contract. *Lambert v. Cummings*, 2 Cal. App. 642.

The use of the term viaduct instead of the word bridge is immaterial. *Bailey v. Hermosa Beach*, 183 Cal. 757.

Resolution of Intention must include all the work provided by the plans and specifications. *Ferry v. O'Brien*, 188 Cal., 629.

Difference in description.

A particular description in the plans and specifications, which are referred to and made a part of the Resolution of Intention, at variance with the general description of the Resolution of Intention creates an ambiguity which renders the proceeding void. *Southwest Paving Company v. Wilson*, 57 Cal. App. 251.

Insufficient description.

The resolution of intention to macadamize does not authorize the construction of rock gutters also. *Patridge v. Lucas*, 99 Cal. 519.

Newspaper.

The designation of a newspaper is jurisdictional. *Chase v. Treasurer, Etc.*, 122 Cal. 540.

The publication must be in a daily newspaper in case there be one published in the municipality. (See Sec. 79, Sub. 4.)

Council may order publication in other than the official newspaper. *Cal. Improvement Co. v. Moran*, 128 Cal. 373.

It is not necessary that the city council should designate the newspaper for publication in a separate order; it is sufficient if the designation is contained in the resolution itself. *King v. Lamb*, 117 Cal. 401.

The publication may be in the supplement of a paper if the so-called supplement is circulated co-extensively with the rest of the paper. *Lent v. Tillson*, 72 Cal. 404.

Publication on Saturday and Sunday satisfies the requirement of two insertions. *Smith v. Hazard*, 110 Cal. 145. (See Section 79, Sub. 4.)

A newspaper may be published in one town even if printed in another. Little or no regard is paid to the mere place of printing, even when the word "printing" coupled with publication is embraced in the statutory requirement. *Stanwood v. Carson*, 49 Cal. Dec. 422.

Failure to publish for the length of time required by the law renders proceedings invalid. *Brady v. Burke*, 90 Cal. 1.

Publication in a newspaper other than the one designated is in effect no publication at all. *Chase v. City Treasurer of Los Angeles*, 122 Cal. 540.

Posting in lieu of publication.

Under Section 79, notice of the passage of the resolution of intention may be given by posting where there is no newspaper published and circulated in the city where the work is to be done. The posting must be for at least eight days and the time for filing protests does not commence until the lapse of eight days. *Coleman v. Spring Const. Co.*, 41 Cal. App. 201.

One or more improvements on one or more streets.

The board may include one or more improvements on one or more streets in a single resolution of intention, whether connected or remote from each other, without requiring them all to be included in the same resolution ordering the work, or to be contracted for by the same individual. *Bates v. Twist*, 138 Cal. 52.

The fact that some of the streets are wider than others does not affect the power of the council to improve them in a single proceeding and under one contract, notwithstanding the owner on a narrower street will be required to

pay the same amount per front foot as one on a wider street.

The propriety of including streets of unequal width in a single proceeding under the front foot assessment plan is for determination of the city council, and its decision will not be overthrown except upon a showing of fraud or an abuse of discretion. *Remillard v. Blake & Bilger Co.*, 169 Cal. 277.

Resolution of intention describing different kinds of work on the same street is a single improvement. *Pepperv. Neiman*, 4 Cal. App. 55.

Excepting work already done.

In case the work has already been done in some places along the proposed line of work, which is often the case where the improvement desired is sidewalks or curbing, this clause should be inserted in the resolution of intention following the description of the work: "excepting therefrom any of said work already done to the official grade."

Excepting work already done.

A Resolution of Intention is not invalid which excepts work already done to the satisfaction of the Street Superintendent. *Powers v. Holmes*, 55 Cal. App. 454.

Railroad tracks.

In case the proposed work is street paving on a street containing railroad tracks the following clause should be inserted in the resolution of intention following the description of the work: "Excepting, however, from all of the aforescribed work, such portion as is required by law to be kept in order or repair by any person or company having railroad tracks thereon." (See Sec. 77.)

Patented process or apparatus.

The grant of letters patent is prima facie evidence that the patentee is the first inventor of the device or the discoverer of the art or process described in the letters patent and its novelty, every reasonable doubt is resolved against the party setting up a defense to a patent. A contractor is not justified in appropriating a patent any more than he would be in appropriating rock from a quarry. Having bid for and received the contract for the paving of the city streets, the contractor had only to enter into a satisfactory arrangement with the owner of the patents for the payment of royalties for the use of the processes covered by the Hassam patents in the performance of the contract with the City of Portland. *Consolidated Contract Company v. Hassam Paving Co.* (1915) 227 Fed. 436, 142 C.C.A. 132.

Official Grade.

Establishment of the official line and grade by the plans and specifications is sufficient. *Fay Imp. Co. v. Rankenburg*, 153 Cal., 488.

Limitation of Purchase of Material from Owner of Patent.

The fact that such materials could be purchased from no one but the company owning the patents is not material, otherwise patented materials could not be used, even though authorized by the statute, because the owner of a patent can always control the production and the price of the article patented. *Woodworth v. Sebastopol*, 46 Cal. App. Dec. 961.

Where the work proposed involves patented pavement provision must be made for permitting all persons to bid. *Perine C. & P. Co. v. Quackenbush*, 104 Cal. 684. *Warren Brothers Company v. Boyle*, 42 Cal. App. 246.

Damages for infringement of patent are recoverable against a city as a joint trespasser and infringer with the contractor, and should be measured by the sum fixed as damages against the contractor. The liability arises in tort and not in contract, and the municipal

corporation is liable as any other infringer. *Reliance Construction Co. v. Hassam Paving Co.* (1918) 248 Fed. 701.

Accepted streets.

An ordinance accepting a city street and binding it to keep it in repair was rendered ineffective by repeal of those sections of the law providing for acceptance. *Ransome-Crummey Co. v. Coulter*, 50 Cal. App. 150.

Reference to bonds.

A recital in the resolution of intention that bonds will be issued to represent the expenses of the improvement in the manner provided by the act is sufficient to confer jurisdiction. *Federal Construction Company v. Ryan*, 47 Cal. App. 637.

Change of law pending proceedings.

A change in the law after proceedings are started can only have a prospective effect where contractual rights have intervened. *Chapman v. Jocelyn*, 182 Cal. 294.

Specifying statute.

It is not necessary to specify the express statutes under which proceedings are taken. *Ransome-Crummey Company v. Cornelius*, 39 Cal. App. 345.

When chargeable on a district.

4. Whenever the contemplated work or improvement, in the opinion of the city council, is of more than local or ordinary public benefit, or whenever, according to estimate to be furnished by the city engineer, the total estimated costs and expenses thereof would exceed one-half the total assessed value of the lots and lands assessed, if assessed upon the lots or land fronting upon said proposed work or improvement, according to the valuation fixed by the last assessment roll whereon it was assessed for taxes for municipal purposes, and allowing a reasonable depth from such frontage for lots or lands assessed in bulk, the city council may make the expense of such work or improvement chargeable upon a district, which the said city council shall, in its resolution of intention, declare to be the district benefited by said work or improvement, and to be assessed to pay the cost and expense thereof. Such district may be described by stating the exterior boundaries thereof, or by giving a description thereof according to any official or recorded map or maps or by referring to a plat or map which shall be on file in the office of the city clerk or city engineer at the time of passing the resolution of intention, which shall indicate by a boundary line the extent of the territory included in the proposed district, which said plat or map shall govern for all details as to the extent of the said assessment district. The said district need not be described in any of the notices or resolutions provided for herein, other than the resolution of intention. (As Amended Statutes 1923, p. 107.)

Size of district.

The size of the district is immaterial. It is not necessary that it be larger than the area of the lots fronting on the streets improved. *O'Dea v. Mitchell*, 144 Cal. 374.

Size of assessment district.

An assessment district under the 1911 Act may include the entire city and except school property. *McGarry v. Ellis*, 54 Cal. App. 622.

Local improvement for entire city.

A sewer system for the benefit of the entire

Record of proceedings in minutes.

Resolution in minutes. It is not necessary to copy a resolution of intention, in full, in the minutes of the city council, provided the resolution is sufficiently identified by reference. *Dowling v. Hibernia Savings & L. Society*, 143 Cal. 425.

Private work stopped.

After passage of resolution of intention the board cannot grant special permits to individual lot owners to do their portions of the work proposed. *Kutchin v. Engelbret*, 129 Cal. 635.

Question of Title.

Although the question of title is a matter for the courts, the city council is not divested of its jurisdiction to determine the question before it. *Ransome-Crummey Company v. Thurber*, 60 Cal. App. 327.

Errors in resolution of intention.

The omission of the word Avenue from the Resolution of Intention and the misspelling of the name of a street in subsequent proceedings will not invalidate the proceedings. *Bou v. Willits*, 61 Cal. App. 32.

city may be the subject of a local improvement and paid for by special assessment on all the lots within the city. *Federal Construction Company v. Ensign*, 59 Cal. App. 200.

Declaration that district is benefited.

The failure in the resolution of intention to declare that the district described is the district to be assessed and benefited is cured by the conclusive evidence clause of the Bond Act. *Watkinson v. Vaughn*, 182 Cal. 55.

Notice of improvement.

5. After the adoption of the resolution of intention, the street superintendent shall cause to be conspicuously posted along the line of said contemplated work or improvement, at not more than three hundred feet in distance apart, but not less than three in all, or when the work to be done is only upon an entire crossing or intersection or any part thereof, in front of each quarter block or irregular block liable to be assessed, notices of the passage of said resolution. In case the work is chargeable upon a district as herein provided, copies of said notice shall also be posted along all the open streets within such district at not more than three hundred feet in distance apart on each street so posted, but no proceeding shall ever be held invalid for failure to post any street or streets therein if this provision has been substantially complied with. In every case all posting must be fully completed at least ten days before the day set for hearing protests or objections as provided in Section 3 hereof.

Said notices shall be headed "Notice of Improvement" in letters of not less than one inch in length; and shall, in legible characters, state the fact of the passage of the resolution of intention, its date, and briefly, the work or improvement proposed, and refer to the resolution of intention for further particulars. Said notices shall contain also a statement of the day, hour and place when and where any and all persons having any objections to the proposed work or improvement may appear before the legislative body and show cause why said proposed improvement should not be carried out in accordance with said resolution.

The council may, if they deem it advisable, direct the clerk to mail copies of said notices to the owners or reputed owners whose names and addresses are known to him, but the mailing of such notices shall not be essential to obtaining jurisdiction by the council, and the failure so to do shall not affect in any manner the validity of any proceedings taken hereunder. (As amended Statutes 1921, p. 222.)

Size of type in heading.

Where the word "Improvement" was in letters five-eighths of an inch in height, instead of one inch, it has been held there was a substantial compliance with the statute. *Coleman v. Spring Const. Co.*, 41 Cal. App. 201.

But it is safer to strictly follow the statute in this respect.

Size of type in body of notices.

The size of type used in the body of the posted notices cannot be complained of if sufficiently legible. *McCaleb v. Dreyfus*, 156 Cal. 204.

Posting.

The notices should be tacked or pasted on trees, fences or buildings, so that they are likely to be observed. Be sure that each letter in the heading is at least one inch high. At least three notices must be posted even though the proposed improvement is in front of one lot only.

Quarter blocks.

Where proposed work is to be done on the

frontage plan on a street more than a block long involving street crossings, it is not necessary that the notices be posted in front of each quarter block liable to be assessed. *Miller v. Mayo*, 88 Cal. 568.

Distance apart.

The distance between notices ought to be measured longitudinally along the line of the improvement, where they are alternating on each side of the roadway, and not measured diagonally. *Pepper v. Neiman*, 4 Cal. App. 55.

Notices more than 300 feet apart.

After bonds are issued, the assessment is valid although one of the notices was posted 309 feet 4 inches from the next one. This was held a substantial compliance. *Gordon v. Ransome Crummeys Co.*, 37 Cal. App. 755.

Insufficient posting.

Where the resolution of intention describes the sewer to be constructed along specified portions of several different streets the notices to be posted must describe the work as an

entirety; and a notice posted along one of such streets, which merely describes the work to be done thereon is insufficient. *White v. Harris*, 116 Cal. 470.

Where the resolution of intention includes several distinct and separate improvements on streets widely apart, it is not necessary to post along the line of a certain street notices of any other improvement than that contemplated on that particular street. *Bates v. Twist*, 138 Cal. 52.

Reference for further particulars.

If the published notice of street work contains the resolution of intention in full, it is not necessary to refer to this resolution of

intention for further particulars. *Schmidt v. Market St. & Willow Glen R. R. Co.*, 90 Cal. 37

Delay in posting notices.

Where the resolution of intention was passed in January, and superintendent's notices were not posted until the 26th of March there was no unreasonable delay, provided the weather was inclement. *Porphry Paving Co. v. Ancker*, 104 Cal. 340.

Proof of posting.

Proof of the posting must be made by the persons who actually posted the notices. Affidavits of publication and of posting must be filed as required by Section 79, fourth subdivision.

Protest and hearing.

6. At any time not later than the hour set for hearing objections to the proposed work as provided in Section 3 hereof, any owner of property liable to be assessed for said work may make written protest against the proposed work or against the extent of the district to be assessed, or both. Such protest must be in writing and be delivered to the said clerk of the city council, and no other protests or objections shall be considered. At the time set for hearing protests the city council shall proceed to hear and pass upon all protests so made and its decision shall be final and conclusive; provided, however, that when the protest is against the proposed work, and the cost thereof is to be assessed upon the property fronting thereon, and the city council finds that such protest is made by the owners of a majority of the property fronting on the proposed work, or when the protest is against the proposed work and the cost thereof is to be assessed upon the property within a district, and the city council finds that such protest is made by the owners of more than one-half of the area of the property to be assessed for said improvements, no further proceedings shall be taken for a period of six months from the date of the decision of the city council on said hearing, unless the said protests be overruled by an affirmative vote of four-fifths of the members of the city council. The words "proposed work" as used herein, shall mean and include all the work described in the resolution of intention. The city council may adjourn said hearings from time to time. (As amended Statutes 1915, p. 1465.)

Time for protesting.

A protest not made within the time limited is ineffective. *Warren v. Russell*, 129 Cal. 381.

Several classes of work.

Where a resolution of intention specifies different classes of work and one or more is protested against, council may order the work to be done for the other classes of improvement. *Los Angeles Lighting Co. v. City of Los Angeles*, 106 Cal. 156.

Protest by co-tenant.

One of the several co-tenants of a lot of land fronting on a proposed improvement has the right to sign a protest for said lot, provided the other co-tenants do not object or did not sign a petition for the improvement. *Los Angeles Lighting Co. v. City of Los Angeles*, 106 Cal. 156.

Protest by agent.

The agent of a lot owner may sign a protest, though the council may require proof of his authority if challenged. *Los Angeles Lighting Co. v. City of Los Angeles*, 106 Cal. 156.

Protest by corporation.

The protest of a corporation may be signed by its general manager; executors are expressly authorized by statute to sign a protest for the owner. *Los Angeles Lighting Co. v. City of Los Angeles*, 106 Cal. 156.

Protest against part of the work.

A protest against part of the work must be received and heard. *Los Angeles Lighting Co. v. City of Los Angeles*, 106 Cal. 156.

Time for hearing protests.

Where the council meets for hearing objec-

tions at an hour different from the one advertised the action of the council is void. *Gill v. City of Oakland*, 124 Cal. 335.

Persons estopped from protesting.

Property owners agreeing in writing for the performance of the work are thereafter estopped from any right to protest against its performance. *Cutting v. Vaughn*, 182 Cal. 151.

One improvement.

Majority protest requires majority of the frontage of all the streets proposed to be improved in one proceeding as one improvement. *Remillard v. Blake & Bilger Co.*, 166 Cal. 277.

Failure to protest.

An objection that the width of the street to be improved was greater than that of the public easement over it is waived by failure to appeal to the council. *Whiteman v. San Diego*, 184 Cal., 163.

Endorsing protest.

Failure of the clerk to endorse protest cannot defeat it. *Thomason v. Carroll*, 132 Cal. 148.

Jurisdiction, when acquired.

7. If no protests or objections in writing have been delivered to the clerk up to the hour set for hearing provided in Section 3 hereof, or when a protest shall have been found by said city council to be insufficient, or shall have been overruled, or, when a protest against the extent of the proposed district shall have been heard and denied, immediately thereupon the city council shall be deemed to have acquired jurisdiction to order the proposed improvements. (As amended Statutes 1915, p. 1466.)

Torrens Land Title Law.—Effect on Section 7 of the Improvement Act of 1911.

It cannot be assumed that in the enactment of the land title law it was intended that the provision of section 94 thereof should repeal or abrogate or affect in any way the declaration of section 7 of the Street Improvement Act of 1911 to the effect that when certain steps had been taken, and which admittedly were all taken in the present proceeding, the council

Effect of protest allowed.

A protest allowed not only stops the work for six months but requires a new resolution of intention in order to again acquire jurisdiction. *Thomason v. Carroll*, 132 Cal. 148.

Continuing hearing of protests.

On the date fixed for hearing protests the council may continue the hearing; but query, whether they are authorized to continue the hearing in advance of date fixed. However, if order of continuance is made in advance of date fixed a property owner who is not a protestant cannot complain. *Farley v. Rein-dollar*, 174 Cal. 703. See Section 80, showing how hearings irregularly adjourned may be validated.

All protests must be acted on.

All protests filed must be acted upon and disposed of in a formal manner before the board acquires jurisdiction to order the work. *Gray v. Burr*, 138 Cal. 109.

Objections liberally construed.

Procedure required of property owners in making their objections should be liberally construed. *City Street Imp. Co. v. Babcock*, 139 Cal. 690.

should be deemed to have acquired jurisdiction to order the work. *Rutledge v. Eureka*, 69 Cal. Dec. 169.

Premature action.

Resolution or ordinance ordering the work to be done, passed before the completion of the publication of the resolution of intention, is of no effect, and any claim of lien thereon is void. *Mulberry v. O'Dea*, 4 Cal. App. 385.

Plans and specifications.

8. Before passing any resolution for the construction of improvements, plans and specifications and careful estimates of the costs and expenses thereof shall be furnished to said city council, if required by it, by the city engineer of said city; and for the work of constructing sewers, specifications shall always be furnished by him.

Certainty.

The fact that the location of a catch-basin was to be determined by the city surveyor is immaterial and will not invalidate the proceedings. *Burns v. Casey*, 13 Cal. App. 154.

Notwithstanding the foregoing decision it is not safe practice to allow this, for the reason that the location of the catch-basin might affect the amount of each assessment; if located on a crossing it would do this.

Specifications should be definite.

Great care should be taken to make the specifications definite and certain so as to avoid vesting any discretion in the street

superintendent or engineer which might affect the cost of the work.

Certainty.

Specifications that the contractor "shall put in such culverts as the street superintendent shall direct" and failure to specify the places and materials, is not sufficient, and also shows an improper delegation of power to the street superintendent, which vitiates the assessment. *Grant v. Barber*, 135 Cal. 188.

Discretion in street superintendent.

It has been held that specifications which confer upon the street superintendent authority to change the proportions of sand and rock in the concrete aggregate, which changes

do not require an increased amount of cement, do not vest an illegal discretion in that official. Vesting the street superintendent with authority to determine the number of revolutions of the drum for mixing each batch of concrete does not confer an illegal discretion on him. *Thoits v. Byxbee*, 34 Cal. App. 226.

A resolution of intention delegating to the street superintendent the right to determine whether planking and concrete should be required for the foundation of sewers is invalid and renders contract and assessment void. *Bolton v. Gilleran*, 105 Cal. 244.

Adoption by resolution.

Specifications may be adopted by resolution. *Haughawout v. Raymond*, 148 Cal. 311.

Variance between specifications and plans.

The fact that specifications called for a lamp hole to be placed at the point indicated on the plans and profile, when the plans, profile and resolution called for six lamp holes, and such number were in fact constructed, is not sufficient variance to deprive council of jurisdiction to order work. the *McCaleb v. Dreyfus*, 156 Cal. 204.

The plans and specifications must conform to and be consistent with the description in the resolution of intention. *Fay v. Reed*, 128 Cal. 357.

Alternative methods.

Specifications containing a provision that "when the ground does not afford a sufficiently solid foundation, the contractor shall excavate the trench to such increased depth as the street superintendent may decide to be necessary and shall then bring it up to the required level and form with such material and in such manner as the street superintendent may

direct," held not to be invalid. *Haughawout v. Hubbard*, 131 Cal. 675.

A specification that a contractor may mix his concrete by hand or by machine is permissible. *Burns v. Casey*, 13 Cal. App. 154.

A specification authorizing the street superintendent to determine, as a result of digging whether a "selective earth material" or "crushed rock" shall be necessary is reasonable, and cannot invalidate the assessment. *Burns v. Casey*, 13 Cal. App. 154.

A specification that if in the judgment of the city engineer, it shall be necessary to put a concrete foundation under a sewer, said concrete to be paid for at a certain price per cubic yard is valid. *McCaleb v. Dreyfus*, 156 Cal. 204.

A specification permitting use of either Class A or Class B rock in certain gutters is not invalid where the two classes of rock are of the same material and differ only in density, and the cost is the same. *Lambert v. Marcuse*, 137 Cal. 44.

Uncertainty.

The failure to locate the curb and gutter lines does not render them uncertain. *Burns v. Casey*, 13 Cal. App. 154.

Specifications which provide that if the soil was unfitted for a foundation planking and concrete must be used as determined by the street superintendent makes the contract invalid. *Bolton v. Gilleran*, 105 Cal. 244.

Extra Work.

A provision in the specifications for such extra work as the street superintendent or city engineer may require, to be paid for pro rata, renders the proceedings invalid. *Perine Contracting Company v. Pasadena*, 116 Cal. 6.

Description by reference.

9. In all resolutions, notices, orders and determinations, subsequent to the resolution of intention it shall not be necessary to describe the assessment district, and in all of the same, subsequent to the resolution of intention and the notice of improvement, it shall be sufficient to refer to the resolution of intention for a description of the work or improvement and the assessment district. (As amended Statutes 1923, p. 107.)

Inviting sealed proposals.

10. Before the awarding of any contract by the city council for doing any work authorized by this act, the city council shall pass a resolution ordering the work. Notice, with specifications, shall be posted conspicuously for five days on or near the council chamber door of said council, inviting sealed proposals or bids for doing the work ordered. Notice inviting such proposals, and referring to the specifications posted or on file, shall be published twice in a daily, semi-weekly, or weekly newspaper published and circulated in said city, designated by the council for that purpose, and in case there is no newspaper published in said city, then it shall only be posted as hereinbefore provided. The time fixed for the opening of bids shall be not less than ten days from the time of the first publication or posting of said notice. All proposals or bids offered shall be accompanied by a check payable to

the city certified by a responsible bank, for an amount which shall not be less than ten per cent of the aggregate of the proposal, or by a bond for the said amount and so payable, signed by the bidder and two sureties, who shall justify, before any officer competent to administer an oath, in double the said amount, and over and above all statutory exemptions. Said proposals or bids shall be delivered to the clerk of the said city council, and said council shall, in open session publicly open, examine and declare the same; provided, however, that no proposal or bid shall be considered unless accompanied by said check or bond satisfactory to the council. The city council may reject any and all proposals or bids should it deem this for the public good, and also the bid of any party who has been delinquent or unfaithful in *any former contract with the municipality*, and shall reject all proposals or bids other than the lowest regular proposal or bid of *any responsible bidder*, and may award the contract for said work or improvement to the lowest responsible bidder at the prices named in his bid. If the bids are rejected or no bids are received the city council may within six months thereafter re-advertise for proposals or bids for the performance of the work as in the first instance, without further proceedings, and thereafter proceed in the manner in this section provided, and shall thereupon return to the proper parties the respective checks and bonds corresponding to the bid so rejected. But the checks accompanying such accepted proposals or bids shall be held by the city clerk of said city until the contract for doing said work, as hereinafter provided, has been entered into, either by said lowest bidder or by the owners of three-fourths part of the frontage, whereupon said certified check shall be returned to said bidder. But if said bidder fails, neglects or refuses to enter into the contract to perform said work or improvement, as hereinafter provided, then the certified check accompanying his bid and the amount therein mentioned, shall be declared to be forfeited to said city and shall be collected by it and paid into the general fund, and any bond forfeited may be prosecuted, and the amount due thereon collected and paid into said fund.

Time for ordering work.

A lapse of six months' time between the passage of the resolution of intention and the resolution ordering the work, is simply a postponement and does not deprive the council of its right to order the work. *City Street Imp. Co. v. Laird*, 138 Cal. 27.

Ordering one of several proposed improvements.

Where the resolution of intention describes different improvements on the same or different streets, it is competent for the council to order only one or more of such improvements to be done. *Los Angeles Lighting Co. v. Los Angeles*, 106 Cal. 156.

Time for receiving bids.

The clerk may fix the time for receiving bids without express directions from the council as to the exact time. *Beckett v. Morse*, 4 Cal. App. 228.

Contents of notice.

The notice given by the clerk inviting sealed

proposals does not affect the validity of the proceedings because of a failure to state that the bid must be accompanied by a certified check or a bond, as the statute does not require any recital as to either in the clerk's notice. *Federal Const. Co. v. Wold*, 30 Cal. App. 360.

However, it is good practice for the notice to state these facts.

Each kind of work.

Be sure and call for separate bids on each kind of work, else it might be impossible to make a proper assessment thereafter, as certain kinds of work must be assessed on quarter blocks.

Ambiguity in notice.

If an ambiguity in the notice inviting bids disappears by reference to the specifications, the notice is good if the specifications are made a part of it by reference and they are open to the inspection of bidders. (*Construing Road District Act of 1907.*) *Dillingham v. Welch*, 179 Cal. 656.

Posting near chamber door.

A notice inviting sealed proposals is sufficiently near the chamber door if 96 feet distant therefrom in a hall. *Haughwout v. Percival*, 161 Cal. 491.

Public declaration of bid.

The minutes of the board must show that the bids received were publicly opened and declared, and in the absence that this was done the assessment will be rendered void. *Edwards v. Berlin*, 123 Cal. 544.

Observing charter requirements.

Where a charter city which has adopted the general street laws for making improvements has a provision in its charter requiring every bidder to make an affidavit of no fraud or collusion, the observance of such charter provision is necessary in order to make a valid contract. *Barber Asphalt Paving Co. v. Costa*, 171 Cal. 138.

Blank bid.

A blank bid omitting the name of the bidder is void and is not rendered valid by a bond attached thereto signed by the contractors and their sureties. *Williams v. Bergin*, 129 Cal. 461.

No valid bid received.

The absence of a valid bid is jurisdictional and a defect which cannot be corrected upon appeal. *Williams v. Bergin*, 129 Cal. 461.

Lowest bidder.

Where the resolution of intention describes several kinds of work such as paving, guttering, curbing and culverts, the work to be done is considered as a unit, and the lowest bidder for the entire work is entitled to the contract, notwithstanding there were lower bidders for each particular class of work. *Stimson v. Hanley, et al.*, 151 Cal. 379.

Responsible bidder.

City council has authority to reject lowest bid from one found to have been delinquent and unfaithful, and its determination as to facts is as conclusive as the verdict of a jury. *Girvin v. Simon*, 116 Cal. 604.

Lowest responsible bidder.

Under Section 5 of the Vrooman Act, (which is identical with Section 10 of the Act of 1911), the city council may properly refuse the bid of the lowest bidder if he has failed to perform a contract for the improvement of the State highway. A finding of the council that such person was not the lowest responsible bidder, in the absence of fraud or collusion, is conclusive. *Thoits v. Byxbee*, 34 Cal. App. 226, 235.

Alternative Plans and Specifications—Procedure.

10½. When the work proposed to be done is the construction or reconstruction of sewers for sanitary or drainage purposes, or either or both thereof, the council shall have power in the resolution of intention to declare its intention to do such work according to some one of two or more plans or methods or with some one of two or more kinds of material or mixtures and to adopt plans and specifications for the doing of such work according to such alternative plans or methods or with such alternative kinds of materials or mixtures. In the event the council shall so declare in its resolution of intention, then the council shall upon the hearing provided in section three hereof, determine that such class or classes or kind or kinds of work shall be

The term "lowest responsible bidder" means the lowest responsible bidder whose offer best responds in quality, fitness and capacity, and courts will not interfere with the discretion of the council in absence of fraud. *West v. City of Oakland*, 30 Cal. App. 556.

Check instead of bond.

The fact that notice inviting sealed proposals provided for a certified check and omitted to recite the alternative of a bond does not make the contract void. *Federal Construction Co. v. Wold*, 30 Cal. App. 360.

Amending resolution of award.

The city council may amend the resolution of award and repost and republish it as corrected. *Federal Construction Company v. Ryan*, 47 Cal. App. 637.

Shortage of bond.

A slight shortage in the amount of the bond does not vitiate the subsequent proceedings. The bond has served its purpose when the contract has been awarded and the property owner cannot object to the preliminary bond if the work has been properly performed. *Greenwood v. Morrison*, 128 Cal. 350.

Record in minutes.

Minutes must show that the bids were publicly opened, examined and declared. *Edwards v. Berlin*, 123 Cal. 544.

A failure to open and declare bids publicly invalidates the assessment. *Edwards v. Berlin*, 123 Cal. 544.

Delay in opening bids.

Where bids were called for at a certain time but were opened two days later it will be presumed that plaintiff's bid was received in time. *Williams v. Bergin*, 129 Cal. 461.

Separate contracts forbidden.

Separate contracts cannot be made for a single improvement. *Treanor v. Houghton*, 103 Cal. 53.

A contract for less work than that proposed in the resolution of intention is void. *Kutchin v. Engelbret*, 129 Cal. 635.

Separate contracts allowed.

A number of contracts to different parties may be let for the different kinds of improvements described in one resolution of intention. *Bates v. Twist*, 138 Cal. 52.

A resolution of intention to construct a sewer along a street will not authorize a contract for constructing a sewer along part of the street only and such contract is void. *McBean v. Redick*, 96 Cal. 191.

so done, and invite proposals for the doing thereof according to such alternative method or plan or with such alternative kinds of materials or mixtures, and upon the opening of such proposals said council shall thereupon fix a time for hearing upon the proposals so received, notice of which shall be given by posting and publication for the same time and in the same manner as is provided for the notice inviting proposals, the first publication of which notice shall be at least ten days before the time of hearing so fixed. At such hearing any person interested shall have the right to appear and be heard upon the question as to which method or plan or material or mixture shall be adopted for the doing of such work and as to which proposal shall be accepted. The council may thereupon in its award of contract determine not only the bidder to whom the award shall be made, but also which one of such alternative methods or plans of doing such work shall be adopted, or which of such alternative materials or mixtures shall be adopted, for the doing of said work. It shall thereupon award the contract, if an award be made, to the lowest responsible bidder for the doing of said work according to such plan or method or material or mixture so adopted, and thereupon said work shall be done in accordance with the plan or method or material or mixture so adopted. No other method of procedure provided for in this act shall govern in regard to the doing of said work. The procedure provided for in this section shall be an alternative procedure to that provided in the other sections of this act, of which this section forms a part, and the council shall be at liberty to use such procedure or not in its discretion. If the council shall not exercise its discretion to call for proposals for the doing of said work according to the alternative method as herein provided for, or plan, or such alternative materials or mixtures, then this section shall not apply to any proceeding taken under this act. It is provided further that, notwithstanding any charter or other provisions of law requiring the award of contract to be made by a public board or officer, other than the council, nevertheless, in all cases where proceedings have been taken under this section the award of contract shall be by the council and said council shall not only determine the bidder to whom the award shall be made, but also the method or plan or materials or mixtures to be adopted for the doing of such work. (Added, Statutes 1925, Chap. 270.)

Notice of awarding contract.

11. Notice of such award of contract shall be published by the city clerk twice in a daily, semi-weekly, or weekly newspaper published and circulated in said city and if no newspaper be published in said city, then in some newspaper published in the county and circulated in said city. (As amended Statutes 1923, p. 108.)

Newspaper.

Publication of notice of award of contract must be made in the newspaper ordered by

the council, otherwise there is no jurisdiction to make the assessment. *California Improvement Co. v. Moran*, 128 Cal. 373.

Owners may take contract.

12. The owners of three-fourths of the frontage of lots and lands liable to be assessed, or their agents, and who shall make oath that they are such owners or agents, shall not be required to present sealed proposals or bids, but may within ten days after the first publication, or

first posting in case there is no publication, of said notice of said award, elect to take said work and enter into a written contract to do the whole work at the price at which the same has been awarded, and all work done under such contract shall be subject to such regulations as may be prescribed by ordinance of the city council. Should the said owners fail to elect to take said work, and to enter into a written contract therefor within ten days, or to commence the work within fifteen days after the date of such written contract, and to prosecute the same with diligence to completion, it shall be the duty of the superintendent of streets to enter into a contract with the original bidder to whom the contract was awarded, and at the prices specified in his bid. (As amended Statutes 1915, p. 1466.)

Private contract to some owners.

Where three-fourths of the property owners, instead of electing to do the work at the price awarded, made a private contract with the contractor at a reduced rate, there was no fraud as to warrant the court to declare the bonds void. *German Savings & Loan Society v. Ramish*, 138 Cal. 120.

Permature contract.

Contract is void if entered into within ten days after first publication of notice of award. *Manning v. Den*, 90 Cal. 610.

Action of the street superintendent in prematurely entering into a contract is not rendered valid by a failure to appeal. *Burke v. Turney*, 54 Cal. 486; *Manning v. Den*, 90 Cal. 610.

Time for letting contract.

The ten days allowed the owners to take the work after the first publication of the resolution of award, does not require the lapse of one day before the ten days begin to run, and a contract let on the 19th where the first publication was on the 8th, was not prematurely let. *Banaz v. Smith*, 133 Cal. 102.

When the last day falls on Sunday or a legal holiday then the whole of the next day must be included. *California Improvement Co. v. Quinchard*, 119 Cal. 87.

Re-advertising for bids.

13. But if such original bidder neglects, fails or refuses, for twenty-five days after the first publication of the notice of award, to enter into the contract, then the city council, without further proceedings, shall again advertise for and receive proposals or bids, as in the first instance, and award the contract for said work to the then lowest regular bidder. Should no bids be received in response to this second call for proposals, the council may again advertise for and receive bids under the same proceedings at any time within six months from the time set for the first reception of bids, and let the contract to the then lowest bidder, and such delay shall in no way affect the validity of any of the proceedings or assessments levied thereunder. The bids of all persons and the election of all owners, as aforesaid, who have

Where the last day within which the contractor must sign up falls on a holiday, he has the whole of the next day to enter into the contract. *Diggins v. Hartshorne*, 108 Cal. 154.

Failure to sign contract.

The objection that the contractor failed to sign the contract within the time allowed by law is not waived by failure to appeal to the council. *Schmidt v. Santa Monica etc. Co.*, 39 Cal. App. 85. (Construing Vrooman Act.)

Street superintendent "de facto."

A street superintendent "de facto" may transact the business of street superintendent in connection with street work proceedings, *Oakland Paving Co. v. Donovan*, 19 Cal. App. 488.

Name of contractor.

An error in naming the contractor is of no consequence. *Anderson v. De Urioste*, 96 Cal. 404.

Mandamus to compel signing.

In a proper case, the property owners may, without previous demand, compel the street superintendent to enter into a contract with the person awarded it, by mandamus. (Under Vrooman Act). *Thoits v. Byxbee*, 34 Cal. App. 226.

failed to enter into the contract, as herein provided, shall be rejected in any bidding or election subsequent to the first for the same work. (As amended Statutes 1923, p. 108.)

Delay in making contract.

Contract not entered into within fifteen days is fatally defective unless containing an averment that the delay was not caused by

the neglect or refusal of the contractor. *Libbey v. Elsworth*, 97 Cal. 316; *Perine v. Forbush*, 97 Cal. 305.

Delinquent contractors.

14. If the owner or contractor, who may have taken any contract, does not complete the same within the time limited in the contract, or within such further time as the city council may give him, the superintendent of streets shall report such delinquency to the city council which may relet the unfinished portion of said work after pursuing the formalities prescribed hereinbefore for the letting of the whole in the first instance.

Bond for faithful performance.

15. All contractors, contracting owners included, shall, at the time of executing any contract for street work, execute a bond to the satisfaction and approval of the superintendent of streets of said city, with two or more sureties and payable to such city, in a sum not less than twenty-five per cent of the amount of the contract, conditioned for the faithful performance of the contract; and the sureties shall justify before any person competent to administer an oath, in double the amount mentioned in said bond, over and above all statutory exemptions.

Protesting erroneous proceedings.

16. At any time within ten days from the date of the first publication of the notice of award of contract, any owner of, or other persons having any interest in any lot or land liable to assessment, who claims that any of the previous acts or proceedings, relating to said improvement are irregular, defective, erroneous or faulty, may file with the clerk of the city council a written notice specifying in what respect said acts and proceedings are irregular, defective, erroneous or faulty. Said notice shall state that it is made in pursuance of this section. All objections to any act or proceeding occurring prior to the time within which such objections are permitted to be filed in relation to said improvement, not made in writing and in the manner and at the time aforesaid, shall be waived, provided the resolution of intention to do the work has been actually published, as provided in this act. (As amended Statutes 1923, p. 108.)

Advancing incidental expenses.

17. Before being entitled to a contract, the bidder to whom the award was made, or the owners who have elected to take the contract, must advance to the superintendent of streets, for payment by him, the cost of publication of the notices, resolutions, orders and matters

required under the proceedings prescribed in this act, and of such other notices as may be deemed requisite by the city council, together with all other incidental expenses incurred up to the time of entering into the contract. And in case the work is abandoned by the city, the incidental expenses incurred previous to such abandonment shall be paid out of the city treasury. (As amended Statutes 1923, p. 108.)

What they are.

(See Section 79, third paragraph.)

Engineering expenses are properly included.
McDonald v. Conniff, 99 Cal. 386.

expenses involved under the present resolution of intention. Any expenses incurred under a former abandoned resolution, or incurred by a former city engineer, cannot be included.
Fitzhugh v. Ashworth, 119 Cal. 393.

Incidental expenses.

Incidental expenses can only cover the actual

Conditions in contract.

18. The superintendent of streets is hereby authorized in his official capacity, to make all written contracts, and to receive all bonds authorized by this act, and to do any other act, either express or implied, that pertains to the street department under this act; and he shall fix the time for the commencement, which shall not be more than fifteen days from the date of the contract, and for the completion of the work under all contracts entered into by him, which work shall be prosecuted with diligence from day to day thereafter to completion, and he may extend the time so fixed from time to time, under the direction of the city council. All applications for such extensions of time, if in writing, must be filed in the office of the city clerk before the expiration of the original time fixed in the contract, or of the time granted by extension, as the case may be. An extension of time may be granted by the council after the expiration of the time originally fixed in the contract or extended as herein provided, and the extension so granted shall be deemed to commence and be effective from the date of such expiration. Any such extension of time shall not release the sureties upon any bond required under this act. The work must, in all cases, be done under the direction and to the satisfaction of the superintendent of streets and the materials used shall comply with the specifications and be to the satisfaction of said superintendent of streets and all contracts made therefor must contain a provision to that effect; *provided, however*, that if the city council by resolution adopted within ten days after the passage of the resolution ordering the work so directs the work shall be done under the direction of the city engineer and the materials used shall comply with the specifications and be to the satisfaction of said engineer, instead of said superintendent of streets, and in such case the contract shall contain a provision to that effect; *and provided, further*, that the city council may by resolution adopted within said ten days provide and direct that the assessment thereafter to be made in the proceeding shall be made and signed by the city engineer instead of by the superintendent of streets. Said contract shall contain also express notice that, in no case, except where it is otherwise provided by law or the

city charter will the city, or any officer thereof, be liable for any portion of the expense, nor for any delinquency of persons or property assessed. The city council may, by ordinance, prescribe general rules directing the superintendent of streets (or the city engineer, in the cases herein provided) and the contractor as to the materials to be used, and the mode of executing the work, under all contracts thereafter made. The assessment and apportionment of the expenses of all such work or improvement shall be made by the superintendent of streets or the city engineer, in the cases herein provided in the mode provided by this act. (As amended Statutes 1923, p. 109.)

Street superintendent "de facto."

A street superintendent "de facto" may transact the business of street superintendent in connection with street work proceedings. *Oakland Paving Co. v. Donovan*, 19 Cal. App. 488.

A de facto street superintendent has authority to sign the contract, even though he be a minor. *Page v. Mintzer*, 42 Cal. App. 695.

Must describe work.

The contract must define the work to be done. *Schwiesau v. Mahon*, 110 Cal. 543; *Rauer v. Fay*, 110 Cal. 361.

Contract for less work.

A contract for less work than that proposed in the resolution of intention is void. *Kutchin v. Engelbret*, 129 Cal. 635.

Variance with resolution of intention.

Where contract for a sewer was let as specified in the call for bids, but the distance was less by a block than the resolution of intention called for, the contract is void, and an assessment creates no lien and cannot be remedied by an appeal. *McBean v. Redick*, 96 Cal. 191; *Ede v. Knight*, 93 Cal. 159.

Where the resolution of intention provided only for "macadamizing" and the contract and assessment called for "macadamizing and curbing" held that the contract was valid as to "macadamizing" but invalid as far as it called for "curbing." *Beaudry v. Valdez*, 32 Cal. 269.

Separate contracts.

Where the character of the improvement to be made on a street crossing was different from that of the balance of the street, the council could let contracts to different individuals, though both improvements were included in the same resolution of intention. *Bates v. Twist*, 138 Cal. 52.

Private contract with certain owners.

A contractor is bound by any private contract with the property owner agreeing to a different price and providing for installment payments. *Flinn & Treacey v. Mowry*, 131 Cal. 481.

Contract by a corporation.

Contract for a corporation, executed by its secretary, with seal attached, will bind the corporation where it appears to have been the custom of the corporation to have its secretary execute contracts; proof of the absence of a resolution authorizing the contract cannot defeat it. *Reid v. Clay*, 134 Cal. 207.

Contract must be signed within time.

The contractor must sign the contract within the time allowed by law, or the contract

is not valid. A property owner does not waive this objection by his failure to appeal to the council as it is not a defect which the council has power to remedy. *Schmidt v. Santa Monica etc. Co.*, 39 Cal. App. 85. (Construing the Vrooman Act.)

Time for entering into contract—holiday.

Should the tenth day after the first publication of the resolution of award fall on a holiday, the contractor has the whole of the next day to sign up. *Diggins v. Hartshorne*, 108 Cal. 154.

Time for commencing work.

It is not necessary that the street superintendent fix the exact day for commencing work; it may be fixed as within a specified number of days from the date of the contract. *Williams v. Bergin*, 127 Cal. 578.

It is mandatory for the street superintendent to fix the time for commencing and completing the work, and without it the contract is invalid. *Libbey v. Elsworth*, 97 Cal. 316; *Buckman v. Ferguson*, 108 Cal. 33; *Fletcher v. Prather*, 102 Cal. 413.

The street superintendent is not obliged to fix the time in the body of the contract but may endorse it on some other part of the contract without the signature of the contractor. *Fletcher v. Prather*, 102 Cal. 413.

Use of Patented Material.

Under the Improvement Act of 1911 (Stats. 1911, p. 730), the board of trustees of a town have the right to enter into a contract for street improvement work which specifies the use of a patented material which can be furnished only by the owner of the patents covering such material. *Woodworth v. Town of Sebastopol*, 46 Cal. App. Dec. 961.

Time of completion of work.

The right to recover for work depends upon the completion within the time limited by the contract. *Barber Asphalt Paving Co. v. Bancroft*, 167 Cal. 187, and cases there cited.

The successor to an outgoing street superintendent may fix the time to complete the contract. *Buckman v. Ferguson*, 108 Cal. 33.

Mistake as to date of completion.

A mistake in recording the contract as to the number of days fixed for the completion of the contract is immaterial, where the original contract fixes the correct number of days. *Wentland v. Clark and Henry Const. Co.*, 37 Cal. App. 34.

Contract in gold coin.

City council cannot make the contract in gold coin and any legal tender will do; but a contract calling for gold coin is not invalidated

thereby. *Perine Contracting & P. Co. v. Quackenbush*, 104 Cal. 684.
Seal on contract.

The corporate seal, though presumptive evidence that the contract was authorized, is not essential to the validity of the contract. *City Street Imp. Co. v. Laird*, 138 Cal. 27.

Changing the grade after letting the contract.

City council has no power to lower the grade of a street after letting the contract under a resolution of intention to fill it to a higher grade; no valid assessment can be levied thereunder. *Warren v. Chandos*, 115 Cal. 382.

Accident insurance.

The right to impose a condition requiring the contractor to take out accident insurance is regarded as questionable.

Minimum wages and hours of labor.

The inclusion in a contract of a provision fixing the hours of labor and the minimum wages of laborers employed by the contractor does not invalidate the assessment. *Flinn v. Peters*, 3 Cal. App. 235.

Under a street assessment contract which stipulates that the entire cost is to be assessed upon the property contiguous to the line of work, and that in no case shall the city be liable for any portion of the work, the eight-hour law does not apply. *Genilla v. Hanley*, 6 Cal. App. 614.

Such provisions in a contract do not invalidate it. *Barber Asphalt Paving Co. v. Bancroft*, 167 Cal. 190, and cases there cited.

Working laborers ten hours a day when the contract calls for an eight-hour day is immaterial and without any effect on the validity of the assessment. *Williams v. Savings & Loan Society*, 97 Cal. 122.

Unlawful Conditions.

A condition providing that "all loss or damage arising from the nature of the work to be done under these specifications shall be sustained by the contractor" looks to damage which might arise out of the completed work, and subsequent thereto, and is void. The law does not allow the municipality to escape its liability by shifting it to the contractor; besides it imposes conditions naturally tending to increase the cost of the work. *Blochman v. Spreckels*, 135 Cal. 662.

A provision in a city ordinance referred to and made a part of the specifications for proposed street work, that "all loss or damage arising from the nature of the work to be done under this agreement, etc.," "shall be sustained by the contractor," renders the assessment void. *Van Loenen v. Gillespie*, 152 Cal. 222.

Specifications containing a provision that "all loss or damages arising from the nature of the work to be done shall be borne by the contractor" are unauthorized as tending to increase the cost of the work, and renders void the bonds issued thereunder. *Joyce v. Newmark, et al.*, 7 Cal. App. 176; *Glassell v. O'Dea*, 7 Cal. App. 472.

A provision in a contract that "all loss or damage arising from the nature of the work to be done under this agreement, or from any unforeseen obstruction or difficulties which may be encountered in the prosecution of the same, or from the action of the elements, or from encumbrances on the lines of the work, or from any act or omissions on the part of the contractor or any person or agent employed

by him not authorized by the contract," has the effect to render invalid the contract, assessment and lien. *Stansbury v. Poindexter*, 154 Cal. 709.

A provision in a contract for a street improvement requiring the work to be done under specifications which provided that "all loss or damage arising from the nature of the work to be done under the agreement * * * shall be sustained by the contractor," renders the contract, assessment and bond void. *True v. Fox, et al.*, 155 Cal. 534.

A condition "that all loss or damage arising from the nature of the work to be done under this agreement or from any unforeseen obstruction which may be encountered in the prosecution of the same shall be sustained by the contractor" imposed an unauthorized condition tending to increase the burden on the property owners and renders void the assessment and bonds issued thereon. *Charters v. Stansbury*, 10 Cal. App. 192.

Where no condition was imposed by the council for the exclusion of Chinese laborers or as to what should constitute a day's work, the street superintendent has no power to impose such conditions. *Hellman v. Shoulters*, 114 Cal. 136.

Provisions in the specifications requiring the contractor to assume responsibility for all loss or damage arising from the nature of the work renders the contract invalid. *Mulberry v. O'Dea*, 4 Cal. App. 385.

A provision in the specifications that "all loss or damage arising from the nature of the work * * * shall be sustained by the contractor," renders the assessment and bonds void. *Woollacott v. Meekin*, 151 Cal. 701.

Lawful conditions.

Provisions in a contract to allow the use of class A or class B rock for the gutters, where there is no difference in the cost of the material, is valid. *Lambert v. Marcuse*, 137 Cal. 44.

A provision that the contractor shall be liable for all loss or damage "arising from the nature of the work to be done under these specifications, during the progress of the work" is valid, providing that it is limited to the damages "arising during the progress of the work." *Gay v. Engebretsen*, 158 Cal. 21.

A provision which makes the contractor responsible for the consequence of his own negligence or carelessness is not improper or fatal to the validity of the assessment. *McQuiddy v. Worswick Street Pav. Co.*, 160 Cal. 9.

A provision that the contractor will be responsible for all damages the city may have to pay in consequence of his failure to protect the public from injury imposes no additional burden on the contractor. *Schindler v. Young*, 13 Cal. App. 18.

Unlawful delegation of power.

Specifications leaving it to the street superintendent or engineer to designate what extra concrete should be put in to be paid for at a pro rata of the contract price, thus giving them the power to increase the cost of the work to an indefinite extent, and withholding from the property owners all means of determining the ultimate cost of the finished work, renders the proceedings invalid. *M. P. Perine C. P. Co. v. City of Pasadena*, 116 Cal. 6.

A contract delegating to the street superintendent the power to determine the amount of fine material to be used, so as to make it impossible for bidders to determine in advance the cost of profit of the work, renders the contract invalid. *Cal. Imp. Co. v. Reynolds*, 123 Cal. 88.

A specification for grading contract requiring the contractor to provide for drainage under all banks and put in such culverts as the street superintendent may direct, is void because of unwarranted delegation of authority to the street superintendent. *Grant v. Barber*, 135 Cal. 188.

Authorizing the city engineer to make a final adjudication of any misunderstanding or dispute as to the interpretation of the contract is invalid and void, but it is harmless where there was no attempt at the exercise of such power and no occasion arose calling for its exercise. Giving of discretion to some person as to matters of detail is inevitable in every street improvement, if no power is improperly delegated. *Burns v. Casey*, 13 Cal. App. 154.

A contract for grading which contains a provision that the street superintendent may make an allowance for settling is an invalid delegation of authority. *Chase v. Scheerer*, 136 Cal. 248.

Lawful delegation of power.

A provision in the specifications for sidewalks that the finishing material shall contain sufficient lampblack or other coloring material to give the work a dark slate color, is not an unlawful delegation of power to the street superintendent. *Burnham v. Abrahamson*, 21 Cal. App. 248.

A contract for a sewer which provides that "when the ground does not afford a sufficiently solid foundation, the contractor shall excavate the trench to such an increased depth as the street superintendent may decide to be necessary, and shall then bring it up to the required level and form, with such material and in such manner as the street superintendent may direct" does not contain any improper delegation of power. *Haughwout v. Hubbard*, 131 Cal. 675.

Provision in a contract that whenever in the opinion of the engineer, it is necessary to remove excavated waste material, outside the lines of the streets, the contractor shall remove such waste material and spread the same in a workmanlike manner does not invalidate the contract. *Hunt v. Manning*, 24 Cal. App. 44.

A provision that concrete may be required for the foundation for a proposed sewer, if deemed necessary by the city engineer, is not invalid if the specifications provide for payment of any such work as may be required, at a given price per cubic yard. *McCaleb v. Dreyfus*, 156 Cal. 204.

Contractor may be given discretion to mix the concrete by hand or machine. *Burns v. Casey*, 13 Cal. App. 154.

Assignment of contract.

Contract may be assigned with or without the consent of the officers of the municipality. *Anderson v. De Urioste*, 96 Cal. 404.

The contractor may assign contract before the completion of the work, in which case the warrant may run in favor of the assignee on the original contract also named. *Hadley v. Dague*, 130 Cal. 207.

Right of lien not assignable.

A perfected lien may be assigned, but a mere right to take a lien is not assignable. *Rauer v. Fay*, 110 Cal. 361.

Extending contractor's time.

The action of the city council setting aside an assessment and warrant and directing further work as the result of an appeal by lot owners, does not operate as an extension of time to the contractor within which to complete the work. *Heft v. Payne*, 97 Cal. 108.

Failure to request an extension of time until the day after the term of the original contract has expired is a mere irregularity which is remedied by the curative provisions of the act. *Oakland Paving Company v. Whittell Realty Company*, 185 Cal. 113.

Injunction extending time.

An injunction by a private person to prevent performance of contract for a street improvement does not extend the time by operation of law, and where no extension was asked for or granted until after the expiration of the time limit for the performance, an assessment for work done after such expiration is void and cannot be enforced. *Union Contracting Co. v. Campbell*, 2 Cal. App. 534.

Recording extension.

Failure to record extension does not render it ineffectual. *Ede v. Knight*, 93 Cal. 159.

Guaranteeing work.

An ordinance requiring that the contractor give a bond in a sum to be determined by the mayor guaranteeing the work for one year from injury, is unauthorized, improperly increases the burden on the property owner, and makes the contract and assessment void. *Alameda Macadamizing Co. v. Pringle*, 130 Cal. 226.

Bond to keep streets in repair.

A bond to keep streets so improved in repair for a term of five years after completion of the contract makes the contract and assessment void. *Brown v. Jenks*, 98 Cal. 10.

Accepting the work.

Acceptance of the work by the street superintendent in absence of an appeal is conclusive as to completion of the work. *Diggins v. Hartshorne*, 108 Cal. 154; *McLaughlin v. Knobloch*, 161 Cal. 676.

The power to accept the work and make the assessment is vested in the street superintendent direct, and not in the city council. *California-Portland Cement Co. v. Boone*, 181 Cal. 35.

The action of the council in accepting street work piecemeal is of no effect. The work must be done to the satisfaction of the street superintendent, and he alone has power to accept. *California-Portland Cement Co. v. Boone*, 181 Cal. 35.

Provision in a contract that the sewer work was to be inspected and rejected or approved by the engineer as the work progressed is valid. *City Street Improvement Co. v. Marysville*, 155 Cal. 419.

Non-Liability of City.

A municipality cannot be held liable for recovery of street assessments. *Conlin v. Board of Supervisors*, 99 Cal. 17.

Bond for labor and material.

19. Every contractor, person, company or corporation, including contracting owners, to whom is awarded any contract for street work under this act, shall, before executing the said contract, file with the superintendent of streets a good and sufficient bond, approved by the mayor, in a sum not less than one-half of the total amount payable by the terms of said contract; such bond shall be executed by the principal and at least two sureties, who shall qualify for double the sum specified in said bond, and shall be made to inure to the benefit of any and all persons, companies, or corporations who perform labor on, or furnish materials to be used in the said work of improvement, and shall provide that if the contractor, person, company, or corporation to whom said contract was awarded fails to pay for any materials so furnished for the said work of improvement, or for any work or labor done thereon of any kind, that the sureties will pay the same, to an amount not exceeding the sum specified in said bond. Any laborer, materialman, person, company or corporation, furnishing materials to be used in the performance of said work specified in said contract, or who performed work or labor upon the said improvement, whose claim has not been paid by the said contractor, company or corporation, who executed the said contract, shall severally have a first lien upon and against the assessment, any partial assessment, any reassessment, and any bonds which may be issued to represent any assessment or reassessment. Such laborers, or materialmen may, at any time prior to thirty days after the recording of the assessment for said work, file with the superintendent of streets, a verified statement of his or its claim, together with a statement that the same, or some part thereof, has not been paid. At any time within ninety days after the filing of such claim, the persons, company, or corporation, filing the same or their assigns, may commence an action either to enforce the aforesaid lien, or on said bond, for the recovery of the amount due on said claim, together with the costs incurred in said action, and a reasonable attorneys fee to be fixed by the court; for the prosecution thereof. (As amended Statutes 1919, p. 480.)

Time for filing.

A material man's claim filed with the street superintendent within thirty days after completion of the work is filed in time. *Barr Lumber Company v. Joy Construction*, 47 Cal. App. 408.

The thirty day period within which laborers and material men may file claims, under Sec. 19 of the Act, begins to run from the day of acceptance by the street superintendent. But, a claim of lien may be filed without waiting for final acceptance. *California-Portland Cement Co. v. Boone*, 181 Cal. 35.

Where the improvement is a single one, laborer's and materialmen's claims may be filed at any time within thirty days after completion of the entire work. *Hub Hdwe. Co. v. Aetna etc. Co.*, 178 Cal. 264.

Claims for materials furnished and labor performed may be filed before the completion

of the contract, in the event that claimant's demand is past due. *Live Oak Lumber Co. v. Farr*, 28 Cal. App. 641.

Limitations of bond.

Bond is not limited to those who supply labor and materials directly to the contractors. *Hub Hardware Co. v. Aetna etc. Co.*, *supra*. (Surety held liable for labor and material furnished to assignee of contractor.) *Los Angeles Stone Co. v. National Surety Company*, 178 Cal. 247.

The same rule has been declared where labor and materials were furnished after the time limited by the contract for the performance thereof. *Hub Hardware Co. v. Aetna etc. Co.*, *supra*; *Los Angeles Stone Co. v. National Surety Company*, 178 Cal. 247.

Surety Companies.

Corporations may serve as surety on all bonds. Sec. 1056, Code of Civil Procedure.

Liability on void contract.

A surety is liable to laborers and materialmen on a bond given according to the terms of this section, even though the original contract is void. *Hub Hardware Co. v. Aetna etc. Co.*, 178 Cal. 264.

Notice to sureties.

The filing of a verified claim of the street superintendent showing that contractors have failed to pay for materials is sufficient notice to sureties for their protection. *Oakland Paving Co. v. Donovan*, 19 Cal. App. 488.

Prior to the amendment of 1919 to Section 19 of the Act, laborers and materialmen had no right against the property owners or to the assessment, but were limited in their remedies to the contractor and surety. Hence, a surety

who paid labor and material claims was not thereby subrogated to the contractor's rights to the assessment. *Adamson v. Paonessa*, 180 Cal. 157.

File claim with street superintendent.

The claimant furnishing material who seeks to recover on the bond given in connection with the contract, must file his statement of claim with the street superintendent. *San Dimas Quarry Co. v. American Surety Co.*, 30 Cal. App. 3.

Showing in case of suit.

In an action to recover upon a bond it is essential for the plaintiff to show that all the requisites of the statute have been observed. *San Dimas Quarry Co. v. American Surety Co.*, 30 Cal. App. 3.

Frontage assessment.

20. Sub. 1. The expenses incurred for any work authorized by this act (which expense shall not include the cost of any work done in such portion of any street as is required by law to be kept in order or repair by any person or company having railroad tracks thereon, nor include work which shall have been declared in the resolution of intention to be assessed on a district benefited) shall be assessed upon the lots and lands fronting thereon, except as otherwise in this act specifically provided; each lot or portion of a lot being separately assessed, in proportion to the frontage, at a rate per front foot sufficient to cover the total expense of the work. (Amended, Statutes 1925, Chap. 281.)

Basis of frontage assessment.

The basis of frontage assessment is the frontage of the lot upon the work irrespective of the shape, size, or depth of the lot. *Diggins v. Hartshorne*, 108 Cal. 154.

Property at end of street.

Property at the end of a street, and at right angles to the street line, does not front on such street. *Duncan v. Ramish*, 142 Cal. 686.

Frontage assessment according to square foot is void.

Under Section 6 of the Statutes of 1909, page 167, (which corresponds to Subdivision 1 above) a frontage assessment must be according to the front foot, and if it is made according to the number of square feet of side-

walk in front of each property owner's property it is void. *City Securities Company v. Harvey*, 176 Cal. 682.

Assessment for grading.

The expense for grading must be assessed equally on both sides of the street, under a frontage assessment, regardless of whether more of the work of grading is done on one side than on the other. The improvement is equally for the benefit of the lots abutting on both sides of the street. *San Diego Inv. Co. v. Shaw*, 129 Cal. 273.

Method of assessment.

The selection of the method of assessment is subject to the discretion of the municipal authorities and will not be reviewed by the courts. *Flynn v. Chiappari*, 191 Cal. 139.

Main street crossings.

Sub. 2. The expense of the work done on main street crossings shall be assessed at a uniform rate per front foot of the quarter blocks and irregular blocks adjoining and cornering upon the crossings, and separately upon the whole of each lot or portion of a lot having any frontage in the said blocks fronting on said main streets, half way to the next main street crossing, or to the end of such street if it does not meet another, and all the way on said blocks to a boundary line of the city where no such crossing intervenes, but only according to its frontage in said quarter blocks and irregular blocks. (Amended, Statutes 1925, Chap. 281.)

Corner lots.

The provision authorizing an assessment according to the combined frontage is valid as there is a double benefit. *Ross v. Barber Asphalt Paving Company*, 158 Cal. 37.

Quarter blocks.

For the definition of the words "quarter blocks," as applying to irregular blocks, see Section 79, Subdivision 12.

Main street terminations.

Sub. 3. Where a main street terminates in another main street, the expenses of the work done on one-half of the width of the street opposite the termination shall be assessed upon the lots in each of the two quarter blocks adjoining and cornering on that side, according to the frontage of such lots on said main streets, and the expense of the work on the other half of the width of said street when the work is sewerage of the terminating street only, shall be assessed upon the lots fronting on the termination and the lots adjacent to said lots on each side half way from the termination to the next terminating or intersecting street, according to the frontage of such lots on that side, and in all other work done on the termination, the property fronting on the termination shall be considered frontage and be assessed as set forth in subdivision one of this section. (Amended, Statutes 1925, Chap. 281.)

Alley and main street crossings.

Sub. 4. Where any alley or subdivision street crosses a main street, the expenses of all work done on said crossing shall be assessed on all lots or portions of lots half way on said alley or subdivision street to the next crossing or intersection, or to the end of such alley or subdivision street, if it does not meet another. (Amended, Statutes 1925, Chap. 281.)

Alley and subdivision street crossings.

Sub. 5. The expense of work done on alley or subdivision street crossing shall be assessed upon the lots fronting upon such alley or subdivision streets on each side thereof, in all directions, half way to the next street, place or court, on either side, respectively, or to the end of such alley or subdivision street, if it does not meet another. (Amended, Statutes 1925, Chap. 281.)

Alley terminations.

Sub. 6. Where a subdivision street, avenue, lane, alley, place or court terminates in another street, avenue, lane, alley, place or court, the expense of the work done on one-half of the width of the subdivision street, avenue, lane, alley, place or court opposite the termination, shall be assessed upon the lot or lots fronting on such subdivision street, avenue, lane, alley, place or court so terminating, according to its frontage thereon, half way, on each side respectively, to the next street, avenue, lane, alley, place or court, or to the end of such street, avenue, lane, alley, place or court, if it does not meet another, and the expense of the work on the other half of the width when the work is sewerage of the terminating subdivision street, avenue, lane, alley, place or court, shall be assessed upon the lots fronting on the termination and the lots adjacent to said lots on each side half way from the termination to the next terminating or intersecting street, according to the frontage of such lots on that side, and in all other work done on the termination the property fronting on the termination shall be considered frontage and be assessed as set forth in subdivision one of this section. (Amended, Statutes 1925, Chap. 281.)

Work on one side of street.

Sub. 7. Where any work mentioned in this act (manholes, sewers, cess-pools, culverts, crosswalks, piling and capping excepted) is done on one side of the center line of any street, or sewerage or re-sewerage is ordered to be,

done under the sidewalk on only one side of any street for any length thereof, the assessment for the expenses thereof shall be made only upon the lots and lands fronting nearest upon that side of the street and for intervening intersections only upon the two quarter blocks adjoining and cornering upon that side. (Amended, Statutes 1925, Chap. 281.)

Public Property.

Sub. 8. Whenever any lot, piece or parcel of land belonging to the United States, or to the State of California, or any lot, piece or parcel of land belonging to any county, city, public agent, mandatory of the government, school board, educational, penal or reform institution or institution for the feeble minded or the insane, and being in use in the performance of any public function, shall front upon the proposed work or improvement, or be included within the district declared by the city council in its resolution of intention to be the district to be assessed to pay the costs and expenses thereof, said city council may, in the resolution of intention, declare that said lots, pieces or parcels of land, or any of them, shall be omitted from the assessment thereafter to be made to cover the costs and expenses of said work or improvement. In the event that said lots, pieces or parcels of land, or any of them, shall by said resolution be omitted from the assessment, then the total expense of all work done shall be assessed on the remaining lots fronting on the work or improvement, or lying within the limits of the assessment district, without regard to such omitted lots, pieces or parcels of land. In the event that the council shall, in such resolution of intention, declare that said lots, pieces or parcels of land so owned as aforesaid, or any of them, shall be included in the assessment, or in the event that no declaration is made respecting such lots, pieces or parcels of land, or any of them, then said city shall be liable for such sum or sums as may thereafter be assessed against any such lots, pieces or parcels of land so owned and used, and so included in the assessment by reason of the aforesaid declaration, or such lots, pieces or parcels of land so owned and used respecting which the resolution of intention makes no declaration, which shall be payable by the said city out of the general fund unless the legislative body shall in its resolution of intention designate another fund; *provided, however*, that any such sum or sums which may be assessed against any such lots, pieces or parcels of land so owned and used, shall not be payable by the city when such sum or sums are paid by the owner of or the governing body controlling such lots, pieces or parcels of land. (Amended, Statutes 1925, Chap. 281.)

Public property.

Street assessment cannot be enforced against lots used for school purposes; the complaint must allege that the lots are not used for school purposes, else it is subject to demurrer. *Witter v. Mission School Dist.*, 121 Cal. 350.

Lands of city by private contract.

The city has no power to make a private contract for competitive bidding for doing work in front of its lands. *City Impt. Co. v. Broderick*, 125 Cal. 139.

School lands not in actual use for school purposes.

An assessment for a street improvement by which lands held in trust for the state university which are not in actual use for school purposes, are benefited in value, may be enforced against such lands, the same as the

property of a private owner. *City St. Imp. Co. v. Regents of the University of Cal.*, 153 Cal. 776.

Property partially devoted to school purposes.

If part of the property owned by an educational institution may be severed from that part devoted to public use without impairing the value or use of the remainder for public use, the severable part may be separately assessed, otherwise no assessment can be made against any of the property. Even though a part of the property may be severed without impairing the value or use of the remainder for public purposes an assessment against the whole tract is totally void and cannot be enforced against the severable portion. *Raish v. Regents of the University of California*, 37 Cal. App. 697.

When owners may grade.

Sub. 9. It shall be lawful for the owner or owners of lots or lands fronting upon any street, the width and grade of which have been established by the city council, to perform, at his or their own expense (after obtaining permission from the council so to do, but before said council has passed its resolution of intention to order grading inclusive of this), any grading upon said street, to its full width, or to the center line thereof, and to its grade as then established, and thereupon to procure, at his or their own expense, a certificate from the city engineer, setting forth the number of cubic yards of cutting and filling made by him or them in said grading, and the proportions performed by each owner, and that the same is done to the established width and grade of said street, or to the center line thereof, and thereafter to file said certificate with the superintendent of streets, which certificate the superintendent shall record in a book kept for that purpose in his office, properly indexed. Whenever thereafter the city council orders the grading of said street, or any portion thereof, on which any grading certified as aforesaid has been done, the bids and contracts must express the price by the cubic yard for cutting and filling in grading; and the said owner or owners and his or their successors in interest, shall be entitled to credit, on the assessment upon his or their lots and lands fronting on said streets for the grading thereof, to the amount of the cubic yards of cutting and filling set forth in his or their certificate, at the prices named in the contract for said cutting and filling; or, if the grade meanwhile has been duly altered, only for so much of said certified work as would be required for grading to the altered grade; *provided, however*, that such owner or owners shall not be entitled to such credit as may be in excess of the assessments for grading upon the lots and lands owned by him or them, and proportionately assessed for the whole of said grading; and the superintendent of streets shall include in the assessment for the whole of said grading upon the same grade the number of cubic yards of cutting and filling set forth in any and all certificates so recorded in his office, or for the whole of said grading to the duly altered grade so much of said certified work as would be required for grading thereto, and shall enter corresponding credits, deducting the same as payments upon the amounts assessed against the lots and lands owned, respectively, by said certified owners and their successors in interest; *provided, however*, that he shall not so include any grading quantities or credit any sums in excess of the proportionate assessments for the whole of the grading which are made upon any lots and lands fronting upon said street and belonging to any such certified owners or their successors in interest. Whenever any owner or owners of any lots and lands fronting on any street shall have heretofore done, or shall hereafter do any work (except grading) on such street, in front of any block, at his or their own expense, and the city council shall subsequently order any work to be done of the same class in front of the same block, said work so done at the expense of such owner or owners shall be excepted from the order ordering work to be done; *provided*, that the work so done at the expense of such owner or owners shall be upon the official grade, and in condition satisfactory to the street superintendent at the time said order is passed. (Amended, Statutes 1925, Chap. 281.)

Diagram of assessment district.

Sub. 10. Whenever the resolution of intention declares that the cost and expenses of the work and improvement are to be assessed upon a district, the city engineer shall make a diagram of the property affected or benefited by the proposed work or improvement, as described in the resolution of intention, and to be assessed to pay the expenses thereof. Such diagram shall show each separate lot, piece or parcel of land, and the dimensions of each such lot, piece or parcel of land, and the relative location of the same to the work proposed to be done, all within the limits of the assessment district; and when said diagram shall have been approved by the city council, the clerk shall certify the fact and date thereof. Immediately thereafter the said diagram shall be delivered to the superintendent of streets of said city, who shall, after the contractor of any street work has fulfilled his contract to the satisfaction of said superintendent of streets or city council on appeal, proceed to estimate upon the lands, lots or portions of lots within said assessment district, as shown by said diagram, the benefits arising from such work, and to be received by each such lot, portion of such lot, piece or subdivision of land, and shall thereupon assess upon and against said lands in said assessment district the total amount of the costs and expenses of such work, and in so doing shall assess said total sum upon the several pieces, parcels, lots or portions of lots, and subdivisions of land in said assessment district, benefited thereby, to wit: upon each respectively, in proportion to the estimated benefits to be received by each of said several lots, portions of lots, or subdivisions of land. In other respects the assessment shall be as provided in the next section, and the provisions of subdivisions one, two, three, four, five, six and seven of this section shall not be applicable to the work or improvement provided for in this subdivision. (Amended, Statutes 1925, Chap. 281.)

Time for making diagram.

The diagram does not have to be made before the contract is let or the work performed, but only in time to enable property owners to suggest corrections. *Banaz v. Smith*, 133 Cal. 102.

Nevertheless it is advisable for all concerned to have the diagram made as early as possible.

Errors in diagram.

In an assessment and diagram if the interior lines of the lots assessed are incorrect, it is immaterial providing the frontage is correct. *Diggins v. Hartshorne*, 108 Cal. 154.

A trivial error in the diagram (such as the direction of an arrow) is not material, providing there is sufficient other description to identify the lot assessed. *Blanchard v. Ladd*, 135 Cal. 214.

Railroad property.

Sub. 11. The terms, lot, lots, lands, piece or parcel of land wherever mentioned in this act shall be deemed to include and shall include property owned or controlled by any person, firm or corporation as a railroad, street or interurban railroad right of way, and whenever a railroad, street or interurban railroad right of way shall front on or abut or parallel or be included with or divide longitudinally any street improved under the provisions of this act or shall be included within any district to be assessed for the cost of any improvement provided in this act, such railroad right of way (whether the same is owned in fee or as an easement) shall be included in the warrant, assessment and diagram and shall be assessed in the manner and with the same effect as other lots, lands or pieces or parcels of land are assessed as provided in this act, and such railroad, street or interurban railroad right of way shall be subject to sale for nonpayment of assessments as in this act provided. (Amended, Statutes 1925, Chap. 281.)

Right of way.

The part of a right of way of a railroad company is not liable for a street assessment and the sale may be enjoined. *Southern Cal. Ry. Co. v. Workman*, 146 Cal. 80.

A railroad company is a quasi-public corporation, in whose railroad the public are interested. It holds a franchise from the state, and its right of way cannot be sold on execution or for a street assessment. *Southern Cal. Ry. Co. v. Workman*, 146 Cal. 80.

A city is without power to levy an assessment on the right of way of a railroad company, or to make a sale of such property to satisfy an assessment, without clear and express authority by the legislature. *San Pedro L. A. & S. L. Ry. Co. v. Pillsbury*, 23 Cal. App. 675.

See also *Acc. Fox v. Workman*, 155 Cal. 201.

See *Schaffer v. Smith*, 169 Cal. 764; *Wilson v. Pacific Electric Ry. Co.*, 176 Cal. 248.

All of the above cases arose and were decid-

ed upon assessments made prior to the amendment of 1913 authorizing the assessment and sale of railroad property.

The motion to assess the land of a railroad company within an assessment district does not invalidate the assessment if the railroad company was not benefited by the improvement. *Dailey v. Hermosa Beach*, 60 Cal. Dec. 350.

Lands subject to a railroad right of way fronting on a street are subject to an assessment for improvement of that street and should be assessed as lands fronting on the street, but excluding from such assessment the easement held for right of way purposes.

The failure to apportion the assessment against the lands fronting on the street subject to the railroad right of way renders the assessment attempted to be made against other lands fronting on that street void on its face. *Schaffer v. Smith*, 169 Cal. 764.

Making the assessment.

21. After the contractor of any street work has fulfilled his contract to the satisfaction of the street superintendent of said city, or the city engineer, if such power has been delegated to him, as hereinbefore provided, the superintendent or the city engineer, if the power and duty to do so has been delegated to him as hereinbefore provided shall make an assessment to cover the sum due for the work performed and specified in said contract (including all incidental expenses), in conformity with the provisions of the preceding section according to the character of the work done. The assessment shall briefly refer to the contract, the work contracted for and performed, and shall show the amount to be paid therefor, together with all incidental expenses, the amount of each assessment against each lot or portion of a lot, the number of each lot or portion or portions of a lot so assessed, and shall have attached thereto a diagram exhibiting each street or street crossing, lane, alley, place or court, property or rights of way on which any work has been done, showing the relative location of each lot, or portion of lot to the work done, numbered to correspond with the numbers of the assessments. The said assessment shall then be filed with the city clerk. Said clerk shall then give notice of the filing of said assessment and of a time to be therein fixed by said clerk when all persons interested in the work done, or in the assessment will be heard by the city council. Such notice shall be posted for not less than five (5) days on or near the council chamber door, and in addition be published twice in a newspaper published in such city if there be any, the first of which publications shall be not less than fifteen (15) days before the time fixed for such hearing. Such notice shall also be given by mailing a post card to the owner of each lot listed according to the name and address appearing on the last equalized assessment roll for city taxes prior thereto, or as known to the clerk; *provided*, that a failure of the clerk to give such notice by mailing or of the person addressed to receive same shall not affect the jurisdiction of the council to proceed with the hearing noticed. Reference shall therein be made to the resolution of intention and the date of its pas-

sage for a description of the work therein mentioned and no other description thereof shall be necessary. The owners, the contractor, or his assigns, and all other persons interested in any work done under this act, or in the assessment, feeling aggrieved by any act or determination of the superintendent of streets, or city engineer in relation thereto, or who claim that the work has not been performed according to the contract in a good and substantial manner, or who claim that any portion of the work for any reason was omitted or illegally included in the contract for the same, or having or making any objection to the correctness of the assessment or diagram or other act, determination or proceedings of the superintendent of streets, or city engineer, shall prior to the day fixed for the hearing upon the assessment, appeal to the city council by briefly stating in writing the grounds of appeal. Upon such appeal, the said city council may remedy and correct any error or informality in the proceedings, and revise and correct any of the acts or determinations of the street superintendent or city engineer, relative to said work; may confirm, amend, alter, modify or correct the assessment or diagram in such manner as to them shall seem just, and require the work to be completed according to the directions of the city council; and may instruct and direct the street superintendent to correct the warrant, assessment, or diagram in any particular. All the decisions and determinations of said city council, upon notice and hearing as aforesaid, shall be final and conclusive upon all persons entitled to appeal under the provisions of this section, as to all errors, informalities, and irregularities which said city council might have avoided, or have remedied, during the progress of the proceedings, or which it can at that time remedy. No assessment, warrant, or diagram, and no proceedings prior to the assessment, shall be held invalid by any court for any error, informality, or other defect in the same, where the resolution of intention of the council to do the work, has been actually published as herein provided. When no appeal is taken or when the orders and determinations of the council upon appeal have been complied with, and the council is satisfied with the correctness of the assessment, thereupon the street superintendent shall attach thereto a warrant bearing the date of said order of said city council. (As amended Statutes 1923, p. 114.)

Making of Assessment by Private Firm.

The act of a superintendent of streets in having an assessment for street work done under the Improvement Act of 1911 made up by a private firm, pursuant to a contract between the latter and himself, assuming that he did so without express statutory authority, constituted a mere irregularity which would not affect the jurisdiction of the city council. *Rutledge v. Eureka*, 69 Cal. Dec. 169.

Delay.

A delay of three years in issuing the assessment and warrant does not necessarily invalidate it. *William v. Bergin*, 116 Cal. 56.

The time within which a street superintendent may make assessments is not prescribed by statute, therefore he may make a valid second assessment if the first was void

in part. *Dyer v. Scalmanini*, 69 Cal. 637; *Wood v. Strother*, 76 Cal. 545.

Where a contractor fails to perform the work the council may re-advertise for bids without repeating the steps necessary to obtain jurisdiction. *Hummelman v. Oliver*, 34 Cal. 246.

Error of street superintendent.

No act of the street superintendent or error on his part in accepting the work, can render an assessment and lien void. *Oak Hill Water Co. v. Gillette*, 13 Cal. App. 605.

Where fraud is set up in defense, the requirements of the contract and not the satisfaction of the street superintendent must prevail. *McVerry v. Kidwell*, 63 Cal. 246.

Benefit not a judicial question.

The question of benefit to the lot owner

cannot be a judicial question, unless the court can plainly see that there could be no benefit, and it is so clear as not to admit of dispute by evidence; otherwise the legislative decision is conclusive. *Duncan v. Ramish*, 142 Cal. 686.

It is not necessary that the assessment should disclose the street superintendent's method of calculation. *Harney v. Benson*, 113 Cal. 314.

The fact that the street superintendent does not sign the assessment does not deprive the contractor of his right to a lien providing the warrant is signed and refers to the assessment and diagram, and the three documents are attached together and recorded. *Petaluma Rock Co., v. Smith*, 23 Cal. App. 100.

Correcting mistake in assessment.

Where the superintendent of streets makes a mistake in the amount of the assessment (including work not actually done) he may correct the mistake upon discovering it. Such an assessment is irregular, but not void. *Stotts v. Meese*, 39 Cal. App. 334.

Omission of the dollar mark on an assessment is not a valid objection if it is placed at the foot. *Himmelman v. Reay*, 1 Cal. Unreported 505.

Mistake as to frontage in specifications.

Where the resolution of intention and the specifications provide for the improvement of a certain street, a mistake in the specifications as to the amount of frontage of certain lots, (which statement was not required in the specifications) is immaterial if the assessment is for the correct amount of frontage. *Wentland v. Clark and Henry Const. Co.*, 37 Cal. App. 34.

Varying width of street.

The assessment per front foot must be equal on the entire frontage of all the streets involved in the proceedings, regardless that some of the streets may be narrower than others, and without regard to the varying difficulty of cost of the work at different points along the line of improvement. *Remillard v. Blake & Bilger Co.*, 169 Cal. 277.

Omission to assess a lot.

Omission to assess a lot does not render an assessment void; the error should be corrected upon appeal to the city council. Failure to appeal deprives property owners of right to object in an action to foreclose the assessment. *Buckman v. Landers*, 111 Cal. 347; *Ahlman v. Barber Asphalt Co.*, 40 Cal. App. 395.

Failure to assess all the property benefited by a street improvement renders the assessment void. *Davis v. Los Angeles*, 86 Cal. 37.

Assessment against portion of frontage only.

The omission from the assessment of one or more lots fronting on the street does not of itself render the assessment void. *San Francisco Paving Co. v. Dubois*, 2 Cal. App. 42.

Excessive assessment.

Where a lot is assessed for more than its lawful proportion the remedy is by appeal to the city council, otherwise the error is deemed waived. *Wells v. Woods*, 114 Cal. 255.

Unlawful assessment.

Where the assessment upon defendant's lot does not require extrinsic evidence to show that it was in violation of the statute, the defendants are entitled to object to that portion of the assessment, without having previously appealed to the board. *Perine v. Lewis*, 128 Cal. 236; *City Securities Co. v. Harvey*, 176 Cal. 682.

Assessment including the cost of work not embraced in a resolution of intention is wholly void. *Partridge v. Lucas*, 99 Cal. 519.

The fact that a contractor has done work not called for by the contract and resolution of intention, will not invalidate the assessment for the work called for by the contract, where the apportionment of assessments for the work uncalled for is separate from the apportionment for that called for, and the demands are separately made. *McDonald v. Mezes*, 107 Cal. 492.

Where it appears from the record that there has been a clear failure to assess property according to benefits, the courts will set the assessment aside regardless of the action of the city authorities in confirming the assessments. *Cutting v. Vaughn*, 182 Cal. 151.

Reference to official map.

Description of a lot in the assessment and diagram by the number it bears to the official map of the city is insufficient if there is nothing contained in the assessment referring to said official map. *Labs v. Cooper*, 107 Cal. 656.

Omission of signature.

The fact that the street superintendent does not sign an assessment, does not deprive the contractor of his right to a lien. *Petaluma Rock Co. v. Smith*, 23 Cal. App. 100.

Street assessment obligation same as taxes.

The obligation of the owner to pay a street assessment is the same as it is to pay his taxes. A street assessment is laid by virtue of the power of the state to tax. *Engelbrechtsen v. Gay*, 158 Cal. 30.

Street assessment is a contract.

The street assessment is a contract and the provisions of the statute in force at the time are a part of the contract. *Oakland Street Improvement Bond Company v. Fitz Maurice*, 47 Cal. App. 258.

Unknown owners.

Right to assess against unknown owners is established. *Barber Asphalt Paving Co. v. Bancroft*, 167 Cal. 188, 189, and cases there cited.

If an improvement is assessed to any person by name and not to unknown owners contractor cannot recover judgment against another person for the assessment. *Blatner v. Davis*, 32 Cal. 328.

Homestead.

A street assessment lien may be enforced against a homestead. *Perine v. Forbush*, 97 Cal. 305.

Agreement between contractors and property owners.

The assessment is not invalidated by reason of a private agreement between the contractor and some of the property owners, waiving their right to take the contract in consideration of a reduction in the price of their assessment. "Fraud without injury confers no right of action." *Duncan v. Ramish*, 142 Cal. 686.

Personal Liability.

There is no personal liability for a street assessment, and there can be no deficiency judgment in an action for its foreclosure. *Page v. Chase Co.*, 145 Cal. 578.

Personal judgment.

A personal judgment for a street assessment is unauthorized and void. *Manning v. Den*, 90 Cal. 610; *Gillis v. Cleveland*, 87 Cal. 214.

Warrant.

22. To said assessment shall be attached a warrant, which shall be signed by the superintendent of streets, and countersigned by the mayor of said city. The said warrant shall be substantially in the following form:

Form of Warrant.

By virtue hereof, I (name of the superintendent of streets), of the city of....., county of (or city and county of.....), State of California, by virtue of the authority vested in me as said superintendent of streets, do authorize and empower (name of contractor) (his or their) agents or assigns, to demand and receive, the several assessments upon the assessment and diagram hereto attached and this shall be (his or their) warrant for the same.

Date:

.....
(Name of superintendent of streets.)

Countersigned by (name of mayor).

Must be signed.

The warrant may be signed by the acting mayor or executive. *City Street Imp. Co. v. Rontet*, 140 Cal. 55.

A warrant must be issued in the name of the original contractor, notwithstanding it has been assigned before the work was completed. *Palmer v. Burnham*, 120 Cal. 364.

Must be dated.

A warrant reciting the year merely without the month or day of the month is invalid. *Shipman v. Forbes*, 97 Cal. 572.

It is essential to the validity of a warrant that it bear a complete date including the month and day of the month as well as the day of the year; without the month or day of the month it is invalid. *Shipman v. Forbes*, 97 Cal. 572.

Recording warrant, etc.

23. Said warrant, diagram and assessment, shall be recorded in the office of said superintendent of streets. When so recorded the several amounts assessed shall be a lien upon the lands, lots, or portions of lots assessed, respectively, for the period of two years from the date of said recording, unless sooner discharged; such lien shall be subordinate to all special assessment liens previously imposed upon the same property, but it shall have priority over all special assessment liens which may thereafter be created against the said property; and from and after the date of said recording of any warrant, assessment and diagram, all persons shall be deemed to have notice of the contents thereof. After said warrant, assessment and diagram are recorded, the same shall be delivered to the contractor, or his agent, or assigns, on demand, but not until after the payment to the said superintendent of streets of the incidental expenses not previously paid by the contractor, or his assigns; and by virtue of said warrant said contractor, or his agents or assigns, shall be authorized to receive the amount of the several assessments made to cover the sum due for the work specified in such contracts and assessments. (As amended Statutes 1923, p. 115.)

Lot lines on diagram.

Incorrect delineation of the interior lines of a lot on the diagram is not a material defect. *Diggins v. Hartshorne*, 108 Cal. 154.

Slight errors in diagram.

A trivial error in the diagram (such as the direction of an arrow) is not material, providing there is sufficient other description to identify the lot assessed. *Blanchard v. Ladd*, 135 Cal. 214.

Points of the compass on diagram.

A recorded diagram omitting the points of the compass is insufficient and no lien can be found thereon. *Labs v. Cooper*, 107 Cal. 656.

Personal signature.

Certificate must be signed by engineer in person or by his official deputy. *Rauer v. Lowe*, 107 Cal. 229.

City engineer's successor.

The successor of the city engineer may make the certificate. *Hornung v. McCarthy*, 126 Cal. 17.

An assessment is not invalid because the city engineer went out of office without making the certificate.

Character of engineer's certificate.

The statute does not specify the character of a certificate. *San Francisco Paving Co. v. Dubois*, 2 Cal. App. 42.

Use of loose-leaf book.

Under the Improvement Act of 1911, the documents required to be recorded by the superintendents of streets were sufficiently recorded, where copies of the originals were inserted in a loose-leaf book and continuously thereafter kept therein for public inspection. *Stokes v. Watkinson*, 189 Cal. 79.

One Record Book.

The assessment, warrant, diagram and certificate must be kept in the same record book.

Demanding payment.

24. The warrant hereinbefore mentioned, shall be and constitute full authority to the contractor, his agents or assigns to collect the said assessments and they shall be free to make demands upon the owners or upon the property by virtue of the said warrant and to demand and receive payment of the same, and give receipt therefor, and they shall, whenever the owner so demands, give a receipt to him, and the street superintendent thereafter, shall upon presentation of such receipt, mark upon the said assessment note of the said payment. (As amended Statutes 1923, p. 116.)

Affidavit of demand.

An affidavit of demand stating that plaintiff "called upon the following persons assessed, or their agents, and demanded payment of the amount assessed to each, respectively," then

A different recording of the engineer's certificate is invalid. *Rauer v. Lowe*, 107 Cal. 229.

Failure to record.

Failure to record a diagram drawn on the back of the engineer's certificate is fatal to the lien. *Buckman v. Cuneo*, 103 Cal. 62.

Failure to sign record.

Failure to sign the record does not render the lien invalid or prejudice the holder of the warrant. *McGinn v. Van Ness, Jr.*, 40 Cal. App. 600.

Diagram and assessment—variance.

Any variance between the original recorded diagram and assessment sufficient to prevent notice being given by an inspection of the record as to property sought to be subject to the lien, is material and fatal to the lien. *Labs v. Cooper*, 107 Cal. 656.

Variance between record and original.

A slight variance between the recorded diagram and the original diagram is immaterial. *Blanchard v. Ladd*, 135 Cal. 214.

Contractor may require complete documents.

The contractor may require complete documents to which he is entitled; if he accepts less it is at his own risk. *Ede v. Cuneo*, 126 Cal. 167.

Paramount lien.

A lien for public taxes and assessments is paramount to all liens acquired by personal contract; and the liens for an assessment for a street improvement is superior to the lien of a prior mortgage upon the property assessed. *O'Dea v. Mitchell*, 144 Cal. 374.

Assignability of lien.

A perfected lien may be assigned, but a mere right to take a lien is not assignable. *Rauer v. Fay*, 110 Cal. 361.

naming the persons, the lot and the amount of the assessment is not invalid because it does not show whether demand was made upon the owner or his agent. *Bienfield v. Van Ness*, 176 Cal. 585, 590.

Contractor's return.

25. The warrant shall be returned to the superintendent of streets on or after twenty (20) days after its date, with the written statement of all payments received upon the assessment, signed by the contractor, or his assigns. Thereupon the superintendent of streets shall file the statement so made with the record of the warrant and assessment by attaching it in the same book and immediately following the

record of the assessment. Upon such filing the warrant shall be re-delivered to the contractor, or his assigns.

The said superintendent of streets is authorized at any time prior to the filing of the written statement signed by the contractor or his assigns hereinabove mentioned, to receive the amount due upon any assessment list and warrant issued by him, and give a good and sufficient discharge therefor; no such payment so made after suit has been commenced, without the consent of the plaintiff in the action, shall operate as a complete discharge of the lien until the costs in the action shall be paid to the superintendent of streets for the plaintiff; *provided*, that the plaintiff has given notice in writing to the superintendent of streets of the pendency of such suit, and he may release any assessment upon the books of his office upon the payment to him of the amount of the assessment against any lot, with interest. In case any warrant is lost, upon proof of such loss a duplicate can be issued, upon which collections may be made, with the same effect as on the original. After the filing of the written statement of payments as aforesaid, all amounts remaining due thereon shall draw interest at the rate of ten per cent per annum until paid, said interest to be computed from the date of the filing of the contractor's statement. (As amended Statutes 1923, p. 116.)

Payment by owners of one-half the lot.

Where payment is made by owners of one-half the lot assessed it is proper to so state in the return, but the lien will continue to run against the whole lot and said payment cannot have the effect of releasing any part of the lot. *Williams v. Bergin*, 127 Cal. 578.

Failure to make return in time.

Failure to return his warrant in time deprives the contractor of his lien upon the property assessed. *City Street Imp. Co. v. Emmons*, 138 Cal. 297.

Final objections.

26. No action, suit, or proceeding to set aside, cancel, avoid, annul or correct any assessment or reassessment, or to review any of the proceedings, acts, or determinations therein, or to question the validity of, or to enjoin the collection of the said assessments or reassessments, or to enjoin the issuance of bonds to represent the same, shall be maintained by any person unless such action or actions shall have been commenced within thirty (30) days after the recording of the warrant, diagram and assessment or reassessment, and thereafter all persons shall be barred from any such action or any defense of invalidity of the assessment or of bonds issued thereon or of the reassessment if such be made and of bonds issued thereon. No proceedings taken or had under this act shall ever be held to be invalid on the ground that the street, right of way, public property or any portion thereof, upon which the work or improvement or any part thereof is or was done

Signing return.

It need not be signed by the street superintendent. *San Francisco Paving Co. v. Egan*, 146 Cal. 635.

Clerical errors in recording.

The clerical omission to fill a blank date in the record of a verification of the contractor's return cannot operate to deprive the contractor of his lien. *Moffitt v. Jordan*, 127 Cal. 622.

Cannot prohibit collection.

Prohibition will not issue to restrain the town marshal from collecting a street assessment, since such act is a ministerial one. *Le Conte v. Berkeley*, 57 Cal. 269.

has not been lawfully dedicated or acquired, provided the same is lawfully dedicated or acquired at any time before judgment is entered in the suit involving such proceeding. (As amended Statutes 1923, p. 117.)

Appeal by one owner.

An appeal made by one assessed owner, going to the whole work done under the contract, operates to stay proceedings against all assessed owners until the appeal is regularly determined after publishing notice and hearing. *Girvin v. Simon*, 127 Cal. 491.

Mortgagee may appeal.

A mortgagee has the right of appeal as fully as the owner of property. *Chase v. Trout*, 146 Cal. 350.

Date of the warrant.

The thirty days within which to appeal is to be counted from the date of the record of the warrant, not the date of the warrant itself. *Cotton v. Watson*, 134 Cal. 422.

When appeal only remedy.

Appeal to the council is the only remedy of a property owner for failure of the contractor to complete the work or misconduct of street superintendent in accepting uncompleted work. *Jennings v. Le Breton*, 80 Cal. 8.

Time for appeal.

Where the original assessment and warrant were loaned to the contractor, the time for appeal does not begin to run until they have been returned and thus recorded. *Federal Construction Co. v. Curd*, 179 Cal. 479.

Form of appeal.

No formality is required in the form of an appeal where the words "protests" or "objections" are used instead of the word "appeal;" it is sufficient. *Belser v. Hoffschneider*, 104 Cal. 455.

Failure to appeal.

Where the plaintiff in an action to quiet title against the contractors, fails to appeal from the determination of the street superintendent, as to completion of work and erroneous levy of assessment, it must be presumed that if he had done so the council would have ordered the errors corrected, and the order of court foreclosing, the lien must be affirmed. *Oak Hill Water Co. v. Gillette*, 13 Cal. App. 605.

An owner who fails to appeal to the city council and contest the assessment is precluded, in a suit to defeat the deed given under foreclosure, from claiming that the lot was not worth the amount of the assessment after the improvement was made. (Under Act of 1885.) *Empire Securities Co. v. Matthews*, 179 Cal. 239.

A failure of parties to challenge the proceedings while in process, will estop them from questioning their regularity after completion. *Lent v. Tillson*, 72 Cal. 404; *McVerry v. Boyd*, 89 Cal. 304.

One who fails to appeal cannot have the assessment declared void because of the inclusion of an illegal charge. *Ahlman v. Barber Asphalt Etc. Co.*, 40 Cal. App. 395.

Reconsideration.

An appeal sustained and the assessment vacated cannot be set aside and reconsidered. *Belser v. Hoffschneider*, 104 Cal. 455.

Where the contractor has done the work in accordance with the contract and to the satis-

faction of the board after one appeal has been taken, the council has no jurisdiction to entertain another appeal by the property owners against acceptance. *Stanwood v. Carson*, 169 Cal. 640.

Improper grade no ground for appeal.

Where the work was not done to the official grade, but to a line that had been proposed for a change of the official grade, and no appeal was taken to the board, a property owner cannot defend an action to foreclose the lien. *Warren v. Riddell*, 106 Cal. 352.

Insufficient performance of work.

This question can only be presented to the city council on appeal, and the decision of the council is conclusive; the question cannot be raised by way of objection to the validity of the assessment. *Lambert v. Bates*, 137 Cal. 676.

An appeal on the ground that the work has not been performed properly, if sustained, sets aside the acceptance of the work by the street superintendent, and the assessment, diagram and warrant are set aside and reversed; and the council cannot rescind its action. A new assessment must be subsequently ordered. *Creed v. McCombs*, 146 Cal. 449.

Erroneous assessment.

If the street superintendent has assessed the lot for a greater amount than it should have been assessed, and the excess does not show upon its face, the error should have been corrected upon appeal to the city council, and such error is unavailing when an action is taken to foreclose the lien on the assessment. *Bates v. Hadamson*, Cal. App. 574.

An erroneous computation of an assessment or improper distribution of the cost upon the lands assessable therefor, is an error which is waived by failure to appeal to the council. *Beckett v. Morse*, 4 Cal. App. 228.

The fact that the amount assessed exceeded the amount at which the lots had been appraised for taxation is not conclusive that the assessment was confiscatory. *Hutchinson v. Coughlin*, 42 Cal. App. 664.

Where a lot is assessed for more than its proper proportion of the cost and the owner fails to appeal the error is waived. *Wells v. Wood*, 114 Cal. 255.

If the method of an assessment is wrong the property owner must appeal. *Harney v. Benson*, 113 Cal. 314.

Assessment void on its face.

Where the assessment is void on its face, a property owner is not required to seek its correction by an appeal to the city council, but may rely upon its invalidity as a defense to enforcing the lien. *City Securities Co. v. Harvey*, 176 Cal. 682.

Discrepancy in map.

Where the precise length of one side of a street at its intersection with another has never been officially declared, and there are discrepancies in the map as to its length, the assessment is not invalidated thereby, but may be remedied on appeal. *Diggins v. Hartshorne*, 108 Cal. 154.

Omission of lot in assessment.

The sole remedy for the omission of a lot that should be assessed in a district assessment is an appeal to the council and a failure to appeal on this ground amounts to a waiver of such objection. The property owner should specify the lot or lots omitted and offer evidence in support of his claim. *Ahlman v. Barber Asphalt Co.*, 40 Cal. App. 395. (Constructing Vrooman Act.)

Effect of councilman owning property assessed.

The interest which one or all the members of the council may have arising from the ownership of property directly affected by the improvement does not disqualify them to act in the making or rectifying of the assessment so as to render their acts void as not constituting due process of law. *Federal Const. Co. v. Curd*, 179 Cal. 489.

Fair hearing imperative.

The council must give a fair hearing and in judicial determination on an appeal to it against the assessment, and if it fails to give such hearing and determination, the property owner may seek relief in the courts. The dismissal of an appeal on the ground that the assessment would have to go to the courts in any event without a full hearing is not binding on the property owner as to the finality of the assessment, as it is not a judicial determination. *Cutting v. Vaughn*, 182 Cal. 151.

Where there is a clear failure to assess the property according to benefits the courts can set the assessment aside regardless of the fact that the city council confirmed the assessment upon appeal. *Cutting v. Vaughn*, 182 Cal. 151.

Contractor's suit.

27. At any time after the period of thirty-five days from the day of the date of the warrant, the contractor or his assignee may sue, in his own name, the owner of the land, lots or portions of lots, assessed on the day of the date of the recording of the warrant, assessment, and diagram, or any day thereafter during the continuance of the lien of said assessment, and recover the amount of any assessment remaining unpaid, with interest thereon at the rate of ten per cent per annum until paid. And in all cases of recovery under the provisions of this act, where personal demand has been made upon the owner or his agent, but not otherwise, the plaintiff shall recover such sum as the court may fix, in addition to the taxable cost as attorney's fees, but not any percentage upon said recovery. And when suit has been brought, after a personal demand has been made, and refusal to pay such assessment so demanded, the plaintiff shall be entitled to have and recover such attorney's fees as the court may deem reasonable, in addition to all taxable costs, notwithstanding that the suit may be settled or a tender may be made before a recovery in said action, and he may have judgment therefor; *provided*, that if the court finds an unnecessary number of actions have been brought, where the parties are identical, it may allow the costs of one action only. Suit may be brought in the superior court within whose jurisdiction the city is in which said work has been done, and in case any of the assessments

The determination of the trial court as to what constitutes a substantial compliance with the statute is controlling. *Beck v. Ransome-Crummey Co.*, 42 Cal. App. 674.

See also *Nutting v. City of Los Angeles*, 35 Cal. App. 519 (Act of 1903).

Hearing imperative.

Publication of the notice of hearing is imperative, and property owner is not estopped from setting up failure to publish even though he appeared at the hearing. *Southern Con. Co. v. Howells*, 21 Cal. App. 330.

Review of council's action.

If the council holds a hearing on the amount of the assessment, and there is any reasonable ground upon which the council may be said to have made the assessment according to benefits, the action of the council cannot be reviewed on certiorari. *Rockridge Etc. Co. v. City Council, etc.*, 178 Cal. 58.

The decision of a city council at the conclusion of a hearing on objections to a street assessment is as conclusive as the judgment of a court in a civil action. *Hutchinson Company v. Coughlin*, 42 Cal. App. 664.

The action of a city council in upholding an assessment and overruling an appeal is conclusive in the absence of fraud. *Cutting v. Vaughn*, 59 Cal. Dec. 130.

Reassessment after appeal.

After the work has been completed to the satisfaction and order of the city council on appeal, the assessment may be made by a proper re-issue by the street superintendent of the old assessment, diagram and warrant. *Stanwood v. Carson*, 169 Cal. 640.

are made against lots, portions of lots, or lands, the owners whereof can not, with due diligence, be found, the service of process may be had in said actions may be had in such manner as is prescribed in the codes and laws of this state. It shall be competent to bring a single action under any such assessment irrespective of the number of lots assessed where the parties defendant are identical, and where separate actions are brought, the same may be consolidated by order of the court. The said warrant, assessment, and diagram, with proof of nonpayment shall be held prima facie evidence of the regularity and correctness of the assessment and of the prior proceedings and acts of the superintendent of streets, and city council upon which said warrant, assessment and diagram are based, and like evidence of the right of the plaintiff to recover in the action.

In a complaint in any such action it shall be held sufficient to allege briefly that the city council ordered the work, the performance of the work under the contract, the making of the assessment, the issuing of said warrant and the making of said diagram; that an assessment (naming the amount) was levied against that certain lot or parcel of land (describing the same) which, according to the information and belief of the plaintiff, is owned by the defendant; that payment of said assessment has not been made.

In describing said lot or parcel of land in said complaint it shall be sufficient to refer to the same by its number upon said diagram, provided a certified copy of said warrant, assessment and diagram shall have been previously filed in the office of the recorder of the county or city and county in which the same is situated. It shall be the duty of such recorder to so file any such certified copy presented to him upon payment of the filing fee therefor, which fee is hereby fixed at fifty (50) cents. (As amended Statutes 1923, p. 117.)

Parties in foreclosure proceedings.

Legal owner should be a party, also one who acquired title under a foreclosure of a prior street assessment lien. *Brady v. Burke*, 90 Cal. 1.

Parties.

The Street Improvement Act of 1911 (Stats. 1911, p. 730) requires the joinder of the owner of the legal title only in a suit to foreclose the street lien, and it is not necessary under the act to join a prospective purchaser of land under a contract of sale executed subsequently to the institution of the foreclosure action. *Lee v. Silva*, 46 Cal. App. Dec. 625.

Property of an estate.

In an action to foreclose a lien against the property of an estate, complaint must contain an averment touching upon the estate. *Flinn v. Gouley*, 139 Cal. 623.

In such actions, the presentation of claims against the estate of the deceased owner is not necessary to the allowance of counsel fees. *Stokes v. Watkinson*, 189 Cal. 79.

Lis pendens must be filed.

A notice of lis pendens must be filed in commencing an action to foreclose a street assessment. *Page v. Chase Co.*, 145 Cal. 578.

Where pending the determination of such foreclosure suit the original owner of the land

conveyed the land to a third person under a contract of purchase, such purchaser and his successor in interest, who took the property with notice of the pending suit, became bound by the judgment and the subsequent sale. *Lee v. Silva*, 46 Cal. App. Dec. 625.

Pleading.

It is not necessary to particularly plead all the various steps in the proceedings, but the acts of the board and officers may be stated to have been duly given and made as provided in Section 456 of the Code of Civil Procedure. *Locke v. Cowan*, 34 Cal. App. 581; *Bienfield v. Van Ness*, 176 Cal. 585.

The failure to state that the street improved is a public street is not ground for general demurrer. *Los Angeles Paving Company v. Los Angeles Foundry*, 181 Cal. 685.

Counterclaim and cross-complaint.

Property-owner has no cause of action against contractor for trespass alleged to have been committed in piling dirt upon abutting property. *Engebretsen v. Gay*, 158 Cal. 29.

The right of the contractor to enforce an assessment grows out of the taxing power. A property owner cannot set up a right of action for damages as a defense, or a setoff or counterclaim, to the cause of action set up

by the contractor. *Hornung v. McCarthy*, 126 Cal. 17.

Prima facie case.

Upon the foreclosure of a street assessment, a prima facie case is made by introducing in evidence the assessment, diagram, warrant, return, and engineer's certificate, which can only be overcome by affirmative proof of a failure of the board to perform some act essential to the validity of the assessment. *Dowling v. Hibernia Savs. & L. Society*, 143 Cal. 425.

An assessment is prima facie evidence that the contractor has fulfilled his contract, and it is not overcome by the certificate of the engineer that the grading was not done to official line and grade. *Buckman v. Landers*, 111 Cal. 347.

In a suit to enforce street assessment evidence that the work has not been properly performed is not admissible. *Girvin v. Simon*, 116 Cal. 604.

Attorney's fee.

Under Section 27 of the Improvement Act of 1911 where the assessment liens are consolidated by the court the attorney is only entitled to a single fee of fifteen dollars (\$15.00)

unless there has been a personal demand and refusal to pay. *Stokes v. Watkinson*, 189 Cal. 79.

Attorney's fee a lien.

An attorney's fee allowed plaintiff is a lien upon the land assessed. *Reid v. Clay*, 134 Cal. 207.

Priority of lien.

A lien for public taxes and assessments is paramount to all liens acquired by personal contract; and the liens for an assessment for a street improvement is superior to the lien of a prior mortgage upon the property assessed. *O'Dea v. Mitchell*, 144 Cal. 374.

Personal liability.

There is no personal liability for a street assessment, and there can be deficiency judgment in an action for its foreclosure. *Page v. Chase Co.*, 145 Cal. 578.

Form of complaint.

Constitutionality of Section 27 of the Improvement Act of 1911 is upheld by the District Court of Appeals but approval of this portion of the opinion is withheld by the Supreme Court. *South San Francisco v. Santa Clara Valley Land Company*, 60 Cal. App. 395.

Reassessments.

28. Whenever any assessment heretofore issued or which may be hereafter issued is or shall be void, or unenforceable, for any cause, or if bonds shall have been, or shall be, issued to represent any assessments and such issuance shall not have been, or shall not be effective through the curative provisions in relation thereto, or any curative act that may be passed by the legislature in relation thereto to make them valid and enforceable, then, in any of such events a reassessment therefor may be issued. The true intent and meaning of this section is to make the cost and expense of work or improvement made through an attempted compliance with this act, payable by the real estate benefited by such work or improvement by making a reassessment therefor.

Such power of reassessing embraces both a full and a partial reassessment, and is not exhausted by a single attempted exercise thereof.

A reassessment shall be ordered under any one of three circumstances:

First. Where the owner or holder of any assessments, or of bonds issued under this act to represent assessments request the legislative body of the city in which the assessment has been or shall be issued to order a reassessment. In such event if said legislative body be of the opinion that the assessments or bonds in question are not enforceable, it shall order the making and issuing of a reassessment covering only the assessments owned or held by the petitioner, or the assessments represented by the bonds owned or held by such petitioner.

Second. Whenever any court of competent jurisdiction in any suit to foreclose the lien of any assessment or to enforce the obligation of any bond issued to represent any assessments issued under this act, has for any reason held such lien unenforceable, then it shall in and by

its decree direct the making of a reassessment to cover the assessments involved in such suit.

Third. Whenever any court of competent jurisdiction in any suit to set aside the lien of any assessment or of any bond representing any assessment, or in any suit to quiet title against the lien of any such assessment, or bond shall in its judgment decree such assessments or bonds to be void, or unenforceable, then it shall in and by its decree direct the making of a reassessment to cover the assessments involved in such suit.

The manner of making, issuing and enforcing the reassessments shall be as follows:

The superintendent of streets shall, upon the entering of a decree of court directing a reassessment or upon the making of an order by the legislative body of the city directing a reassessment, proceed to make a reassessment in the following manner:

If the reassessment be a partial one only, then it shall not be necessary for the diagram to show any other lots than the ones covered by such partial reassessment. If it be a full reassessment, however, then it shall be upon the lots fronting on said work if the original assessment was one made on the front foot plan; if the original assessment was made against a district, then the superintendent of streets shall prepare and file with the reassessment a diagram showing the lots, pieces or parcels of land deemed by him to have been benefited by the work or improvement. The reassessment shall assess upon and against each of the lots, pieces or parcels of land contained therein an amount arrived at as follows: The benefits derived, or to be derived by each of the said lots, pieces or parcels of land from the work or improvement estimated as of the date of the original assessment shall first be listed. Then there shall be added thereto interest thereon from twenty (20) days after the date of recording the original assessment at the rate of seven per cent (7%) per annum, and the total sum shall constitute and be the amount of the proposed several assessments in such reassessment. The total of such reassessment, however, exclusive of interest, shall not exceed the cost of the work or improvement. Such assessment need not be in any prescribed form, but shall refer to the original assessment, give the date of the original assessment and state that it is made pursuant to the order of the legislative body of the city or decree of the court, as the case may be, and shall be accompanied by a diagram showing the lots to be reassessed and their relation to the work. It shall then be presented to the legislative body, which shall fix a time for hearing before it. Such time must be at least twenty (20) days after the reassessment is so presented. The city clerk shall then advertise the time of such hearing before the legislative body by publishing a notice in the newspaper in which the notice of award of contract for the improvement for which the assessment was made, was published unless the legislative body directs publication in some

other paper. If the reassessment is to be against the lots fronting the improvement, this fact shall be stated in the notice. If the reassessment is to be against the property in a district, then this fact shall be stated in the notice and a description of the district shall be set forth and the assessment diagram referred to for particulars. Such notice shall be published for five insertions, if the paper be a daily, or by two insertions if the paper be published less frequently. At the time fixed for said hearing, or at such time or times to which the same may be thereafter adjourned, the legislative body shall consider the objections to said reassessment and in its discretion informally direct the revision, correction or modification of such reassessment in such manner as is most equitable to apportion to each lot, piece or parcel of land thereby benefited the amount of the actual benefits derived from said improvement. When such reassessment shall have been revised, or corrected or modified so as to comply with the judgment of said legislative body, then it shall pass a resolution confirming the reassessment. The street superintendent shall thereupon record the reassessment with a certificate at the end thereof by the city clerk, that it is the reassessment approved by the legislative body of the city. He shall also note opposite the several assessments in the original assessment that have been displaced by the reassessment the fact that the reassessment has been made, giving its date, and shall credit upon such reassessment all payments theretofore made upon the original assessment, or upon the bonds issued to represent the same, together with interest on such payments at the rate of seven per cent (7%) per annum from and after the date of such payments. Such reassessment shall be collectible and payable in the same manner as an original assessment and shall be enforceable by suit in the same manner provided in this act for enforcing an original assessment, and shall have the same weight in evidence. In the event that bonds issued under the original assessment they shall also issue upon the reassessment for such sum as may be reassessed against the lot, piece or parcel of land covered thereby. When the reassessment is recorded the original assessment shall be canceled by the street superintendent so far as it affects the particular assessments involved. New bonds shall not be issued until the original bonds are delivered up to the city treasurer, who shall cancel the same. The lien of such reassessment shall hold its relative rank as to other special assessment liens as of the date of the original assessment. (As amended Statutes 1923, p. 118.)

Reassessment.

The reassessment provision is valid. *Ferry v. O'Brien*, 188 Cal., 629.

Injunction suspends statute limitations.

The action to foreclose street assessment

lien commenced after two years is valid where the assessment was restrained by injunction. *Elliott & Horne Co. v. Chambers Land Co.*, 61 Cal. App. 310.

Selling premises on execution.

29. The court in which said suit shall be commenced shall have power to adjudge and decree a lien against the premises assessed, and to order such premises to be sold on execution, as in other cases of the

sale of real estate by the process of said courts; and on appeal, the appellate courts shall be vested with the same power to adjudge and decree a lien and to order such premises to be sold on execution or decree as is conferred on the court from which an appeal is taken. Such premises, if sold, may be redeemed as in other cases. In all suits now pending or hereafter brought under this act to recover street assessments, the proceedings therein shall be governed and regulated by the provisions of this act, and also, when not in conflict herewith, by the codes of this state.

Sale for delinquent assessment.

The sale is limited to the identical lot described in the assessment, no more or less, otherwise the sale is void. *Los Angeles Etc. v. Pozzi*, 167 Cal. 457.

No injunction.

A property owner is not entitled to an injunction to restrain the street superintendent from selling property on non-payment

of an assessment. *Byrne v. Drain*, 127 Cal. 663; *Ellis v. Witmer*, 134 Cal. 249.

No personal judgment.

A judgment on foreclosure of a street assessment which provides for personal judgment against the defendant for being inefficient is unauthorized and erroneous. *Manning v. Den*, 90 Cal. 610; *Gillis v. Cleveland*, 87 Cal. 214.

Partial assessment.

30. The city council, instead of waiting until the completion of the improvement, may, in its discretion, and not otherwise, upon the completion of two blocks or more of any improvement, order the street superintendent to make an assessment for the proportionate amount of the contract completed, and thereupon proceedings and rights of collection of such proportionate amount shall be had as provided in the preceding sections.

Limited to life of contract.

A proportional assessment may only be granted during the life of the contract and the

progress of the work, and not after the contract has lapsed and the work been abandoned. *John Kelso Co. v. Gillette*, 136 Cal. 603.

Repairs.

31. When any portion of any improved street, avenue, lane, alley, court, or place in said city, or any sidewalk constructed thereon shall be out of repair, or pending reconstruction, and in condition to endanger persons or property passing thereon, or in condition to interfere with the public convenience in the use thereof, it shall be the duty of said superintendent of streets to require, by notice in writing, to be delivered to them or to their agent personally, or left on the premises, the owners or occupants of lots or portions of lots fronting on said portion of said street, avenue, alley, lane, court, or place, or said portion of said sidewalk so out of repair or needing reconstruction as aforesaid, to repair or reconstruct, or to do both, forthwith, said portion of said street, avenue, lane, alley, court, or place, to the center line of said street in front of the property of which he is the owner, or tenant, or occupant; and said superintendent of streets shall particularly specify in said notice what work is required to be done, and how the same is to be done, and what material shall be used in said repairs, or reconstructions, or both. If said repairs, or reconstructions, or both, be not commenced within three days after notice given as aforesaid, and diligently and without interruption prosecuted to com-

pletion, the said superintendent of streets may, under authority from said city council, make such repairs, reconstructions, or both, or enter into a contract with any suitable person, at the expense of the owner, tenant, or occupant, after the specification for the doing of said work shall have been conspicuously posted by him in his office for two days, inviting bids for the doing of said work, which bids shall be delivered to him at his office on or before the second day of said posting, and opened by him on the next day following the expiration of said two days of posting, and the contract by him be awarded to the lowest bidder, if such lowest bid, in the judgment of said street superintendent, shall be reasonable. All of said bids shall be preserved in his office and open at all times after the letting of the contract to the inspection of all persons, and such owner, tenant, or occupant shall be liable to pay said contract price. Such work shall be commenced within twenty-four hours after the contract shall have been signed, and completed without delay to the satisfaction of said street superintendent. Upon the completion of said repairs, or reconstruction, or both, by said contractors as aforesaid, to the satisfaction of said superintendent of streets, said superintendent of streets shall make and deliver to said contractor a certificate to the effect that said repairs, or reconstruction, or both, have been properly made by said contractor to the grade, and that the charges for the same are reasonable and just, and that he, said superintendent, has accepted the same.

Suit for repairs.

32. If the expenses of the work and material for such improvement, after the completion thereof, and the delivery to said contractor of said certificate, be not paid to the contractor so employed, or his agent or assignee, on demand, the said contractor, or his assignee, shall have the right to sue such owner, tenant, or occupant, for the amount contracted to be paid; and said certificate of the superintendent of streets shall be prima facie evidence of the amount claimed for said work and materials, and of the right of the contractor to recover for the same in such action. Said certificate shall be recorded by the said superintendent of streets in a book kept by him in his office for that purpose, properly indexed, and the sum contracted to be paid shall be a lien, the same as provided in Section 23 of this act, and may be enforced in the same manner.

Additional penalty for neglect.

33. In addition, and as cumulative to the remedies above given, the city council shall have power, by resolution or ordinance, to prescribe the penalties that shall be incurred by any owner or person liable, or neglecting, or refusing to make repairs when required, as provided in Section 31 of this act, which fines and penalties shall be recovered for the use of the city by prosecution in the name of the

people of the state of California in the court having jurisdiction thereof, and may be applied, if deemed expedient by the said council, in the payment of the expenses of any such repairs not otherwise provided for.

Tenant may pay assessment.

34. Any tenant or lessee of the lands or lots liable may pay the amount assessed against the property of which he is the tenant or lessee under the provisions of this act, or he may pay the price agreed on to be paid under the provisions of Section 30 of this act, either before or after suit brought, together with costs, to the contractor, or his assigns, or he may redeem the property, if sold on execution or decree for the benefit of the owner, within the time prescribed by law, and deduct the amount, so paid from the rents due and to become due from him, and for any sums so paid beyond the rents due from him, he shall have a lien upon and may retain possession of the said land and lots until the amount so paid and advanced be satisfied, with legal interest, from accruing rents, or by payment by the owner.

Service of notice.

35. Notices in writing which are required to be given by the superintendent of streets, under the provisions of this act, may be served by any person, with the permission of the superintendent of streets, and the fact of such service shall be verified by the oath of the person making it, taken before the superintendent of streets, who for that purpose, and for all other purposes, and in all cases where a verification is required under the provisions of this act, is hereby authorized to administer oaths, or other person authorized to administer oaths or such notices may be delivered by the superintendent of streets himself, who must also verify the service thereof, and who shall keep a record, of the fact of giving such notices, when delivered by himself personally, and also of the notices and proof of service when delivered by any other person.

Accepted streets.

36. Repealed (Statutes 1915, p. 1477.)

Effect of repeal.

An ordinance accepting a city street and binding it to keep it in repair was rendered

ineffective by repeal of those sections of the law providing for acceptance. **Ransome-Crummey Co. v. Coulter**, 177 Cal. 574.

Records of street superintendent.

37. The superintendent of streets shall keep a public office in some convenient place within the municipality, and such records as may be required by the provisions of this act. The records so kept and signed by him, shall have the same force and effect as other public records, and copies therefrom duly certified, may be used in evidence with the same effect as the originals. The said records shall, during all office hours, be open to the inspection of any person wishing to examine them, free of charge.

Note.

A street superintendent's record book in loose leaf form, designed by a committee of expert street lawyers and covering all the requirements of the act, is published and sold by A. CARLISLE & Co., 251 Bush Street, San Francisco, Cal.

Superintendent's record, one book.

The warrant, assessment, diagram and engineer's certificate must be recorded in one book. *Rauer v. Lowe*, 107 Cal. 229.

Must sign record.

Failure of the street superintendent to sign the record of the return of the warrant is a fatal omission. *Witter v. Bachman*, 117 Cal. 318.

Duty of street superintendent.

38. It shall be the duty of the superintendent of streets to see that the laws, ordinances, orders, and regulations relating to the public streets and highways be fully carried into execution, and that the penalties thereof are rigidly enforced. He shall keep himself informed of the condition of all public streets and highways, and also of all public buildings, parks, lots, and grounds of said city, as may be prescribed by the city council. He shall, before entering upon the duties of his office, give bonds to the municipality, with such sureties and for such sums as may be required by the city council; and should he fail to see the laws, ordinances, orders, and regulations relative to the public streets or highways carried into execution, after notice from any citizen of a violation thereof, he and his sureties shall be liable upon his official bond to any person injured in his person or property in consequence of said official neglect. He shall superintend and direct the cleaning of all sewers, and the expense of the same shall be paid out of the street or sewer fund of said city.

Damages, defective streets.

39. If, in consequence of any graded street or public highway or sidewalk, being out of repair and in condition to endanger persons or property passing thereon, any person, while carefully using said street or public highway, or sidewalk and exercising ordinary care to avoid the danger, suffer damage to his person or property, through any such defect therein, no recourse for damages thus suffered shall be had against such city; but if such defect in the street or public highway shall have existed for a period of twenty-four hours or more after written notice thereof to the said superintendent of streets, then the person or persons on whom the law may have imposed the obligations to repair such defect in the street or public highway, and also the officer or officers through whose official negligence such defect remains unrepared, shall be jointly and severally liable to the party injured for the damage sustained; provided, that said superintendent has the authority to make said repairs, under the direction of the city council, at the expense of the city.

Liability of city.

A municipal corporation is not liable, in the absence of an express statutory provision imposing a liability for personal injuries caused by its negligence in leaving a street out of repair. *Arnold v. San Jose*, 81 Cal. 618.

Incorporated cities are not liable for injuries sustained by private individuals through

the neglect of the officers charged with the duty of keeping streets in repair. *Tranter v. Sacramento*, 61 Cal. 271; *Chope v. Eureka*, 78 Cal. 588.

See *Norton v. Ransome-Crummey Co.*, 173 Cal. 343.

Partial expenses from treasury.

40. The city council may, in its discretion, order, by resolution that the whole or any part of the cost and expenses of any of the work mentioned in this act be paid out of the treasury of the municipality from such fund as the council may designate, in which case it shall be so stated in the resolution of intention. Whenever a part of such cost and expenses is so ordered to be paid, the superintendent of streets, in making up the assessment heretofore provided for such cost and expenses, shall first deduct from the whole cost and expenses such part thereof as has been so ordered to be paid out of the municipal treasury, and shall assess the remainder of said costs and expenses proportionately upon the lots, parts of lots and lands fronting on the streets where said work was done, or liable to be assessed for such work, and in the manner heretofore provided.

City engineer.

41. The city engineer, or where there is no city engineer, the county or city and county surveyor, shall be the proper officer to do the surveying and other engineering work necessary to be done under this act, and to survey and measure the work to be done under contracts for grading and macadamizing streets, and to estimate the costs and expenses thereof; and every certificate signed by him in his official character shall be prima facie evidence in all courts in this state of the truth of its contents. He shall also keep a record of all surveys made under the provisions of this act, as in other cases. In all those cities where there is no city engineer, the city council thereof is hereby authorized and empowered to appoint a suitable person to discharge the duties herein laid down as those of city engineer, and all the provisions hereof applicable to the city engineer shall apply to such person so appointed. Said city council is hereby empowered to fix his compensation for such services.

Inspector.

42. The superintendent of streets (or the city engineer, if the city council has by resolution directed that the work be done under his direction and to his satisfaction, as provided in Section 18 of this act) shall, when in his judgment it is necessary appoint a suitable person or persons to take charge of and superintend the construction and improvement of any work authorized by this act, whose duty it shall be to see that the contract made for the doing of said work is strictly fulfilled in every respect and in case of any departure therefrom to report the same to the superintendent of streets, or to the city engineer, if appointed by him. Such person shall be allowed for his time actually employed in the discharge of his duties such compensation as shall be just, but not to exceed seven dollars per day. The sum to which the party so employed shall be entitled shall be deemed to be incidental expenses within the meaning of those words as defined by this act. (As amended Statutes 1921, p. 245.)

PART II.

Change of grade.

43. The city council is hereby empowered to change or modify the grade of any public street, lane, alley, place or court, and to regrade or repave the same, so as to conform to such modified grade, in the manner as hereinafter provided. Before any change of grade is ordered the city council shall pass a resolution of intention to make such change or modification of grade, and it shall have power at the same time and in the same resolution to provide for the actual cost of performing the work of regrading, repaving, sewerage, sidewalking, or curbing of said street or portion of street, with the same or other material with which it was formerly graded, paved, sewerage, sidewalked, or curbed; and that the cost of the same shall also be assessed upon the same district which is declared to be benefited by such changed or modified grade. One or more streets or blocks of streets may be embraced in the same resolution. Such resolution shall be published twice in the newspaper in which the official notices of the city council are usually printed and published, to be designated in such resolution and shall describe the proposed change or modification of grade or regrading, and shall designate and establish the district to be benefited by such change or modification of grade or regrading, and to be assessed for the cost of the same. The superintendent of streets shall also cause to be conspicuously posted within the district designated in the resolution, notice of the passage of said resolution. Said notice shall be the same in all requirements of contents and posting as the "notices of improvement" provided for in Section 5 of this act. If no objection to said proposed change or changes, or modifications of grade, shall be filed with the clerk of the council within thirty days from the first publication of the resolution of intention hereinbefore mentioned, or, if objections are presented, and after due notice and hearing are overruled by the council, the city council shall have power to order and declare such grades to be changed and established in conformity to said resolution, which order shall be posted by the clerk on the chamber door of the council for five days. (As amended Statutes 1915, p. 1471.)

Damages for change of grade.

An owner of land injured by change of grade is entitled to compensation for such injury, whether it be change from the natural grade or change from the official grade. *Eachus v. Los Angeles Con. Elect. Railroad Co.*, 103 Cal. 614.

Damage can only be sustained by change in the natural grade, and not by the ordinance fixing the grade. *Eachus v. Los Angeles Con. Elect. Railroad Co.*, 103 Cal. 614.

The right to damages by reason of a change of grade arises solely under the constitution. If the owner desires to preserve his right to antecedent payment he must sue to enjoin the work; and if he fails to do so before the street is improved to the changed grade, he is remitted to his right of action against the city for damages, which is an independent right

and cannot affect the validity of an assessment for grading and improving the street. *Duncan v. Ramish*, 142 Cal. 686.

The grantee of one who dedicates a street to the public is not estopped by reason of the dedication from obtaining damages from the city for bringing the street to the official grade. (Under Act of 1903.) *Partridge v. Richmond*, 36 Cal. App. 389.

A property owner damaged by change of grade may refuse the award of the council and insist upon a jury. *Wilcox v. Engebretson*, 160 Cal. 288.

Damages for change of grade.

Property owners damaged should enjoin the performance of the contract and not the collection of the assessment. *Butters v. City of Oakland*, 53 Cal. App. 294; 263 U. S. 162, 68 Law Ed. 54.

Claiming damages.

44. Within thirty days after the first posting of said order, as aforesaid, any person owning property fronting upon said portions of the street or streets where such change of grade is made, may file a petition with the clerk of the city council showing the fact of such ownership, the description and situation of the property, its market value, and the estimated amount of damages over and above all benefits which the property would sustain by the proposed change if completed. Such petition shall be verified by the oath of the petitioners or their agents.

If no claim, damages deemed waived.

Those who do not ask for damages under the notice and hearing on the question of damages, may be deemed to have waived them. *German Savings & Loan Society v.*

Ramish, 138 Cal. 120. The failure to claim damages within the time allowed by the statute operates as a waiver thereof. *Duncan v. Ramish*, 142 Cal. 686.

Commissioners.

45. Whenever such petition or petitions have been filed, the mayor, engineer or surveyor, and superintendent of streets of the city, or city and county, or board of public works if there be such a board acting as a board of commissioners, shall assess the benefits, damages, and costs of the proposed change of grade upon each separate lot of land situated within such assessment district showing the same by a plat as said lot appears of record upon the last city, or city and county assessment roll. The commissioners shall be sworn to make the assessments of benefits and damages to the best of their judgment and ability, without fear or favor. The commissioners shall have power to subpoena witnesses to appear before them to be examined under oath, which any one of said commissioners is authorized to administer.

Damages and benefits.

46. The commissioners having determined the damage which would be sustained by each petitioner, in excess of all benefits, shall proceed to assess the total amount thereof, together with the costs, charges, and expenses of the proceedings, upon the several lots of land benefited within the district of assessment, so that each of the lots shall be assessed in accordance with its benefits caused by such work or improvement; and during the progress of their work shall make a report to such city council as often as it may be required.

Report of commissioners.

47. The commissioners shall make their report in writing, and shall subscribe to the same and file it with the city council. In their said report they shall describe separately each piece of property which will sustain damage, stating the amount of damages each will sustain over and above all benefits. They shall also give a brief description of each lot benefited within said assessment district, the name of the owner, if known, and the amount of benefits in excess of damages assessed against the same. In case the three commissioners do not agree, the award agreed upon by a majority of them shall be sufficient. In designating the lots to be assessed, reference may be had to

a diagram of the property in the district affected; such diagram to be attached to and made a part of the report of the commissioners. If in case the commissioners find that conflicting claims of title exist, or shall be in ignorance or doubt of the ownership of any lot or land, or any improvement thereon, or any interest therein, it shall be set down as belonging to unknown owners. Error in the designation of the owner or owners of any land or improvements, or particulars of their interest, shall not affect the validity of the assessment.

Notice of hearing report.

48. On the filing of said report, the clerk of said city council shall give notice of such filing by publication twice in one or more daily newspapers, or in a weekly or semi-weekly newspaper so published and circulated; and said notice shall require all persons interested to show cause, if any, why such report should not be confirmed, before the city council, on a day to be fixed by the city council and stated in said notice, which day shall not be less than twenty days from the first publication thereof.

Objections to report.

49. All objections shall be in writing and filed with the clerk of the city council, who shall, at the next meeting after the date fixed in the notice to show cause, lay the said objections, if any, before the council, which shall fix a time for hearing the same; of which time the clerk shall notify the objectors in the same manner as are notified objectors to the original resolution of intention. At the time set, or at such other time as the hearing may be adjourned, the city council shall hear such objections and pass upon the same, and at such time shall proceed to pass upon such report, and may confirm, correct, or modify the same, or may order the commissioners to make a new assessment, report, and plat, which shall be filed, notice given and had, as in the case of an original report.

Advertising for bids.

50. In case the resolution of intention also provides for the assessing upon the district the cost of regrading or repaving such street or streets to such changed or modified grade, after the report of the commissioners as to the damages caused by such change of grade has been passed upon by the city council, it shall then advertise for bids to perform the work of regrading, repaving, sewerage, sidewalking or curbing such street or streets with the same or other material with which the same had been formerly graded, paved, sewerage, sidewalked, or curbed; first causing a notice, with specifications, to be posted conspicuously for five days on or near the council chamber door, inviting sealed proposals or bids for doing such work, and shall also cause notices of said work, inviting said proposals and referring to the specifications posted or on file, to be published twice, in a daily, semi-weekly, or weekly newspaper published and circulated in said city, and designated by the city council for that purpose. All proposals or bids

offered shall be accompanied by a check, payable to the city, and certified by a responsible bank, which shall not be less than ten per cent of the aggregate of the proposals; or by a bond for said amount, signed by the bidder and two sureties, who shall justify under oath in double said amount over and above all statutory exemptions. Said proposals or bids shall be delivered to the clerk of the said city council, and said council shall in open session publicly open, examine and declare the same; provided, however, that no proposal or bid shall be considered unless accompanied by a check or a bond satisfactory to the council. The city council may reject any and all bids, and may award the contract to the lowest responsible bidder. If not accepted the city council may readvertise for proposals or bids as in the first instance, and thereafter proceed in the manner in this section provided. All checks accompanying bids shall be held by the clerk until such successful bidder has entered into a contract, as herein provided; and in case he refuses so to do, then the amount of his certified check shall be declared forfeited to the city, and shall be collected and paid into its general fund, and all bonds so forfeited shall be prosecuted, and the amount thereof collected and paid into such fund. Notice of the awards of the contracts shall be published and posted in the same manner as hereinbefore in this section provided for the posting of proposals for said work.

Making assessment.

51. After such contract has been awarded and entered into, the clerk of the city council shall certify to the city council that fact, together with the total amount of the cost of the same, whereupon the city council shall cause to be forwarded to the commissioners a copy of such certificate; whereupon such commissioners shall proceed to assess the cost of doing such work upon all the lots and land lying within the district to be assessed, distributing the same so that each lot will be assessed for its proportion of the same, according to the benefits it receives from the work, and in the same manner in which the damages caused by the change of grade were assessed upon the same. Such commissioners in making such assessment shall show the total amount for which each lot or tract is assessed in excess of all benefits, for the total cost of changing and modifying the grade of the street, as well as the regrading, repaving, sewerage, sidewalk, and curbing of the same, and costs or damages connected therewith. The provisions of Part I of this act in regard to the mode or manner of the assessment of the cost of such work shall not apply to the work in this part contemplated; neither shall the provisions of this act in regard to the issuing of bonds to represent the cost of the same, nor the provisions in regard to the right of protest against the work apply.

Assessment-roll.

52. The clerk of said city council shall forward to the street superintendent of the city a certified copy of the report, assessment, and

plat, as finally confirmed and adopted by the city council. Such certified copy shall thereupon be the assessment-roll, the cost of which shall be provided for by the commissioners, as a portion of the cost of the proceedings therein. Immediately upon receipt thereof by the street superintendent, the assessment therein contained shall become due and payable, and shall be a lien upon all the property contained or described therein.

Collecting assessments.

53. The superintendent of streets shall thereupon give notice, by publication twice in one or more daily newspapers published and circulated in said city, or city and county, or in a weekly or semi-weekly newspaper so published and circulated, that he has received said assessment-roll, and that all sums levied and assessed in said assessment-roll are due and payable immediately, and that the payment of said sums is to be made to him within thirty days from the date of the first publication of said notice. Said notice shall also contain a statement that all assessments not paid before the expiration of said thirty days will be declared to be delinquent, and that thereafter the sum of five per cent upon the amount of such delinquent assessment, together with the cost of advertising each delinquent assessment will be added thereto. When payment of any assessment is made to said superintendent of streets, he shall write the word "Paid" and the date of payment opposite the respective assessment so paid, and the name of the persons by or for whom said assessment is paid, and shall give a receipt therefor. On the expiration of said thirty days, all assessments then unpaid shall be and become delinquent, and said superintendent of streets shall certify such fact at the foot of said assessment-roll, and shall add five per cent to the amount of each assessment so delinquent. After the date of said delinquency no assessment shall be received unless said five per cent together with all costs be paid therewith.

Sale of property.

54. The said superintendent of streets shall, within five days from the date of such delinquency, proceed to advertise the various sums delinquent, and the whole thereof, including the cost of advertising, which last shall not exceed the sum of fifty cents for each lot, piece or parcel of land separately assessed. Said list of delinquent assessments, with a notice of the time and place of sale of the property affected thereby, shall be published twice in one or more daily newspapers published and circulated in such city, or in a weekly newspaper so published and circulated before the day of sale for such delinquent assessment. Said time of sale must not be less than seven days from the date of the first publication of said delinquent assessment list, and the place must be in or in front of the office of said superintendent of streets. If any assessment together with said penalty and costs be not paid before the time of sale the street superintendent shall proceed to sell and shall sell each lot, piece or parcel of land separately as-

sessed at public auction to the bidder offering to pay the amount due for the least portion of such lot, piece or parcel of land so offered for sale, and shall issue a certificate therefor. If there be no bidder said property shall be struck off to the municipality.

Redeemable within one year.

55. All property sold shall be subject to redemption for one year by the payment of the amount of the assessment, penalty and costs and interest thereon at the rate of ten per cent per annum from the date of sale. The superintendent of streets shall, if there is no redemption, make and deliver to the purchaser at such sale, or his consignee, a deed conveying the property sold, and shall collect for each deed one dollar. The deed of the street superintendent, made after such sale, in case of failure to redeem, shall be prima facie evidence of the regularity of all proceedings hereunder and of title in the grantee.

Separate funds.

56. The superintendent of streets shall from time to time pay over to the city treasurer all moneys collected by him on account of any such assessments. The city treasurer shall, upon receipt thereof, place the same in a separate fund, designating each fund by the name of street, square, lane, alley, court, or place for the change of grade for which the assessment was made. Payments shall be made from said fund to the parties entitled thereto, upon warrants signed by the commissioners or a majority of them.

Notice of damages awarded.

57. When sufficient money is in the hands of the city treasurer, in the fund voted for the proposed work or improvement, to pay the total cost of damages, as well as for the cost of doing the work, and all other expenses connected therewith, it shall be the duty of the commissioners to notify the owner, possessor, or occupant of the premises damaged, and to whom damages have been awarded, that a warrant has been drawn for the payment of the same, which can be received at the office of such commissioners. Such notification may be made by depositing a notice, postage prepaid, in the postoffice, addressed to his last known place of residence. If, after the expiration of three days after the service or deposit of the notice in the postoffice, he shall not have applied for such warrant, the same shall be drawn and deposited with the city treasurer, to be delivered to him upon demand.

Condemnation proceedings.

58. If the owner of any premises damaged neglects or refuses, for ten days after the warrant has been placed in the hands of the city treasurer, subject to his demand, to accept the same, the city council may cause proceedings to be commenced, in the name of the city, to condemn said premises, as provided by law under the right of eminent domain. The resolution of intention shall be conclusive evidence of the necessity of the same. Such proceedings shall have precedence, so far

as the business of the court will permit, and any judgment for damages therein rendered shall be payable out of a special fund in the treasury for that purpose. At any time after the trial and judgment entered, or pending appeal, the court may order the city treasurer to set apart in the city treasury a sufficient sum from said fund to answer the judgment, and thereupon may authorize or order the municipality to proceed with the proposed work or improvements. In case of a deficiency in said fund to pay the whole assessed judgment and damages, the city council may, in its discretion, order the balance thereof to be paid out of the general fund of the treasury, or to be distributed by the commissioners over the property assessed by a supplementary assessment; but in the last-named case, in order to avoid delay, the city council may advance such balance out of any available fund in the treasury, and reimburse the same from the collection of assessments. The treasurer shall pay such warrants in the order of their presentation; provided, that warrants for damages and for costs of performing the work shall have priority over warrants for charges and expenses, and the treasurer shall see that sufficient money remains in the fund to pay all warrants of the first class before paying any of the second. The provisions of Section 1251 of the Code of Civil Procedure, requiring the payment of damages within thirty days after the entry of judgment, shall not apply to damages rendered in proceedings under this act. All provisions contained in Parts I and IV of this act, which provisions are not in conflict herewith, shall apply to all matters herein contained.

PART III.

Serial bonds may be issued.

59. The city council of any municipality in this state shall have the power, in its discretion, to determine that serial bonds shall be issued in the manner and form hereinafter provided to represent assessments of twenty-five dollars or over for the cost of any work or improvement authorized in Part I of this act.

Taxing power.

The power conferred upon the council by the Street Bond Act to impose a charge upon property owners for a period of ten years, is a proper exercise of the taxing power. *German Savings & L. Society v. Ramish*, 138 Cal. 120.

Street Bond Act constitutional.

Because of its priority to all other liens the act is not unconstitutional as impairing the obligation of a prior mortgage, nor is it a violation of the fourteenth amendment to the federal constitution. *German Savings & Loan Society v. Ramish*, 138 Cal. 120.

When and where payable.

60. Said serial bonds shall extend over a period not to exceed nine years from the second day of January next succeeding the fifteenth day of the next November following their date, and an even annual proportion of the principal sum thereof shall be payable, by coupon on the second day of January every year after the fifteenth day of the next November following their date, until the whole is paid, and the interest shall be payable semi-annually, by coupon, on the second days

of January and July, respectively, of each year after their date, at the rate of not to exceed ten per cent per annum on all sums unpaid, until the whole of said principal and interest are paid. Upon such bonds dated after the fourteenth day of May of any year and on or before the fourteenth day of the following November the first interest coupon on said bonds shall become due and payable on the second day of the next succeeding January and upon such bonds dated after the fourteenth day of November of any year and before or on the fourteenth day of the following May the first interest coupon on said bonds shall become due on the second day of the next succeeding July.

Said bonds and interest thereon shall be paid at the office of the city treasurer of said municipality, who shall keep a fund designated by the name of said bonds, into which he shall place all sums paid him for the principal of said bonds and the interest thereon, together with all penalties thereon, and from which he shall disburse such sums, upon the presentation of said coupons; and under no circumstances shall said bonds or the interest thereon be paid out of any other fund. Said city treasurer shall keep a register in his office, which shall show the series, number, date, amount, rate of interest, payee and indorsees of each bond, and the number and amount of each coupon of principal or interest paid by him and shall cancel and file each coupon so paid.

The owner of or any person interested in any lot or parcel of land upon which a bond has been issued under the terms of this act may at any time before commencement of proceedings for sale pay off such bond and discharge the land described in the bond from the lien of the assessment, by paying to the city treasurer, for the holder of such bond, the amount then unpaid on the principal sum thereof, with interest thereon calculated up to the due date of the next maturing interest coupon at the rate named in the bond, and all penalties accrued and unpaid, together with interest for six months at the rate named in such bond. Upon such payment being made to the city treasurer he shall report the same to the street superintendent, who shall forthwith mark paid on the margin of the record of the assessment, the assessment to represent which such bond was issued, and thereupon the lien of said assessment shall cease and the city treasurer shall forthwith notify the holder of the bond and call in the same. The city treasurer shall enter in his record of such bond the amount paid and the date of payment, and upon the lien of the assessment being extinguished as aforesaid, shall cancel said bond and file it in his office. (As amended Statutes 1923, p. 276.)

Notice in resolution of intention.

61. When said city council shall determine that serial bonds shall be issued to represent the expenses of any proposed work or improvement under this act, it shall so declare in the resolution of intention to do said work, and shall specify the rate of interest which they shall bear. Also a notice that a bond will issue to represent each assessment of twenty-five dollars or more remaining unpaid for twenty days after

the date of the warrant, shall be included in the warrant. (As amended Statutes 1923, p. 277.)

The resolution of intention need not state or fix the definite period for which the bonds are to run. But the time must be fixed before the warrant is issued. The council must fix

the term of the bonds and no other person can legally do so. *Cohn v. Federal Const. Co.*, 171 Cal. 547. (Construing various street bond acts.)

Notification to treasurer.

Sec. 62. After the full expiration of twenty days from the date of the warrant, the street superintendent shall make and certify to the city treasurer a complete list of all assessments unpaid, which amount to twenty-five dollars or over, upon any assessment, or diagram number; the principal of said unpaid assessments shall thereafter become due and payable to said treasurer in equal annual payments on the fifteenth day of each November succeeding the filing of said list until fully paid; the number of said annual payments shall correspond to the number of serial payments provided to be made on the principal of the bonds issued to represent said unpaid assessments; the interest on said unpaid assessments shall be payable on each fifteenth day of May and November succeeding the filing of such list of unpaid assessments, the last interest payment coming due forty-five days before the last annual payment of the principal of the bonds issued to represent said unpaid assessments; the first payment of the installment of interest shall be paid as set forth in section 60 hereof; the following shall each be for six months interest. Should any payment of principal of said unpaid assessments or of interest thereon be not paid on the date upon which the coupon or coupons representing it are payable, the city treasurer shall after the close of business on said due date add to the amount of principal or interest so delinquent a penalty of five per cent of the total amount of such delinquency, and at the beginning of business on the first day of each succeeding month, until such delinquent payment and all penalties thereon be fully paid, he shall add an additional penalty of one per cent of the amount of such delinquency, and said treasurer shall collect such penalties with and as a part of such delinquent payments.

The city treasurer shall at least fifteen days before each respective fifteenth day of May and November, until said assessment be paid in full, mail, postage prepaid, to each owner of property described in said assessment, at his last known address, as appears upon the tax rolls of said city, a postal card notifying him of the amount due and the date when payment is due from him on said assessment and stating that said payment is subject to penalty if not paid on or prior to the due date of the coupons. *Provided*, that the failure of the city treasurer to mail said cards or the failure of the property owner to receive the same shall in no wise affect the validity of any penalty or invalidate any act or proceeding. (As amended Statutes 1923, p. 277.)

Form of bond.

63. The city treasurer shall upon the filing of said list, make out, sign, and issue to the contractor, or his assigns, payee of the warrant

and assessment, a separate bond, representing upon each lot or parcel of land upon said list the total amount of the assessment against the same, as thereon shown, where the unpaid assessment or the unpaid remainder thereof amounts to twenty-five dollars or over. And if said lot or parcel of land is described upon said assessment and diagram by its number or block, or both, and is also designated by its number or block, or both, upon the official map of said municipality, or upon any map on file in the office of the county recorder of the county in which said municipality is situated, then it shall be in said bond a sufficient description of said lot or parcel of land to designate it by said number or block, or both, as it appears on said official or recorded map.

Said bond shall be substantially in the following form:

STREET IMPROVEMENT BOND.

Series (designating it), in the city (or other form of the municipality) of (naming it).

\$.....100 No.....

Under and by virtue of an act of the legislature of the State of California (title of this act), I, out of the fund for the above designated street improvement bonds, series....., will pay to....., or order, the sum of.....dollars (\$.....) with interest at the rate of.....per cent per annum, all as is hereinafter specified, and at the office of the..... treasurer of the.....of..... State of California.

This bond is issued to represent the cost of certain street work upon....., in the..... of....., as the same is more fully described in assessment number..... issued by the street superintendent of said....., after the acceptance of said work, and recorded in his office. Its amount is the amount assessed in said assessment against the lot or parcel of land numbered therein, and in the diagram attached thereto, as number....., and which now remains unpaid, but until paid, with accrued interest, is a lien upon the property affected thereby, as the same is described herein and in said recorded assessment with its diagram, to-wit: the lot or parcel of land in said.....of....., county of....., State of California,

This bond is payable exclusively from said fund, and neither the municipality nor any officer thereof is to be holden for payment otherwise of its principal or interest. The term of this bond is..... years from the second day of January next succeeding the fifteenth day of the next November following its date, and at the expiration of said time the whole sum then unpaid shall be due and payable; but on the second day of January of each year, following the fifteenth day of the next November, after its date, an even annual proportion of its whole amount is due and payable, upon presentation of the coupon

therefor, until the whole is paid, with all accrued interest at the rate of.....per centum per annum.

The interest is payable semi-annually, to-wit: on the second days of January and of July in each year hereafter, upon presentation of the coupons therefor, hereto attached, the first of which is for the interest from date to the next second day of....., and thereafter the interest coupons are for semi-annual interest.

This bond may be redeemed by the owner or any person interested in any lot or parcel of land described herein, in the manner provided in said act, at any time before maturity, and before commencement of proceedings for sale, upon payment to the city treasurer, for the holder of this bond, of the amount then unpaid on the principal sum thereof, with interest thereon calculated up to the due date of the next maturing interest coupon, and all penalties accrued and unpaid, together with interest for six months at the rate named in said bond.

Should default be made in the annual payment upon the principal, or in any payment of interest from the owner of said lot or parcel of land, or anyone in his behalf, the holder of this bond is entitled to declare the whole unpaid amount to be due and payable, and to have said lot or parcel of land advertised and sold forthwith, in the manner provided by law. In case of such default, there shall be immediately added to such defaulted amount, five per cent of the amount thereof, and on the first day of each month following such default there shall be added a further penalty of one per cent of such defaulted amount. The city shall be entitled to one-half the penalty first imposed, namely, two and one-half per cent and the other two and one-half per cent and all subsequent penalties shall be paid to the holder of the bond along with and as a part of such defaulted payment.

At said.....of....., this..... day of....., in the year one thousand..... hundred and.....

City treasurer of the.....of.....

(As amended Statutes 1923, p. 278.)

Conclusive evidence of regularity.

The provision making the bonds issued for street improvements conclusive evidence of the regularity of proceedings, is not intended to cure defects and irregularities which may

not be cured by the council on appeal, and is conclusive evidence only of all proceedings not jurisdictional in their nature. *Chase v. Trout*, 146 Cal. 350.

Limitation, twenty-five dollars.

64. In case the amount of unpaid assessments upon any lot or parcel of land shall be less than twenty-five dollars, then the same shall be collected as is hereinbefore provided in Part I of this act.

Owner may stop issuance.

65. If any person, or his authorized agent, shall at any time before the issuance of the bond for said assessment upon his lot or parcel of land present to the city treasurer his affidavit, made before a competent officer, that he is the owner of a lot or parcel of land in said list, accompanied by the certificate of a searcher of records that he is such

owner of record, and with such affidavit and certificate such person notifies said treasurer in writing that he desires no bond to be issued for the assessments upon said lot or parcel of land, then no such bond shall be issued therefor, and the payee of the warrant, or his assigns, shall retain his right for enforcing collection as if said lot or parcel of land had not been so listed by the street superintendent.

Description of bonds.

66. The bonds so issued by said treasurer shall be payable to the party to whom they issue, or order, and shall be serial bonds, as is hereinbefore described, and shall bear interest at the rate specified in the resolution of intention to do said work. They shall have annual coupons attached thereto, payable in annual order, on the second day of January of every year after the fifteenth day of the next November following the date of the bond, until all are paid, and each coupon shall be for an even annual proportion of the principal of the bond. They shall have semi-annual interest coupons thereto attached, as set forth in section 60 hereof. The city treasurer shall, in addition to his other duties in the premises, keep a record of all bonds issued by him, of all payments on said bonds with the dates thereof and of all penalties accruing thereon; and he shall report all payments of coupons or penalties upon said bonds, with the dates thereof, to the street superintendent, who shall forthwith endorse the same upon the margin of the record of the assessment to the credit of which the same are paid, and said assessment shall be a first lien upon the property affected thereby until the bond issued for the payment thereof, and the accrued interest thereon and the penalties, if any, shall be fully paid according to the terms thereof. Said bonds, by their issuance, shall be conclusive evidence of the regularity of all proceedings thereto under this act. (As amended Statutes 1923, p. 280.)

Conclusiveness of bond.

The provisions of the bond act, making the issuance of the bonds conclusive evidence of the validity of the lien is without the power of

legislature and unavailing; but is conclusive evidence of all proceedings except those essential to acquiring jurisdiction. *Ramish v. Hartwell*, 126 Cal. 443; *Chase v. Trout*, 146 Cal. 350.

Penalty for default.

67. Whenever payment either upon the principal, or of the interest upon any bond issued hereunder has not been, or shall not be made when the same has become, or shall become due, and the holder of the bond demands in writing that the city treasurer proceed to advertise and sell the lot or parcel of land described by said bond as being that upon which the assessment represented by said bond was levied, then said treasurer shall proceed as provided in the next section. (As amended Statutes 1921, p. 293.)

Sale of property.

68. The treasurer shall publish by two insertions in a newspaper of general circulation, published in the city in which said bond was issued, or if no newspaper is published in said city, then in some newspaper having general circulation therein, a notice which shall be substantially (filling in all blanks) as indicated following, to-wit:

"Notice of sale of property delinquent for nonpayment of bond No....., series No....., issued for the improvement of..... Default having been made in the payment of the following named coupons (here fill in date and amounts of the coupon or coupons which have not been paid) and the holder of said bond having demanded in writing that the city treasurer of the city of.....proceed to advertise and sell the lot or parcel of land mentioned in the said bond. Now, therefore, I give notice that I will on the.....day of....., 192....., at the hour of.....o'clock.....M., of said day, sell at public auction the lot or parcel of land mentioned in said bond, or so much thereof as may be necessary at (here state the place of sale, which shall be at the office of said treasurer or at some public place in said city) unless the amount due on said bond and the accrued interest thereon together with the cost of the publication of this notice are paid; and that I will so sell the same to the person who will take the least amount of said lot or parcel of land and pay the full amount of unpaid principal and interest on said bond, together with costs of publication. The lot or parcel of land mentioned in said bond and to be sold, is more particularly described, to-wit: (here set forth the description of the lot or parcel of land as contained in the bond). The amount due on said bond up to the date of this notice is as follows: Due on the principal thereof, \$.....dollars; due on account of interest \$.....dollars (here set forth the interest calculated and compounded semi-annually up to the day on which the notice is dated at the interest rate named in said bond upon the unpaid principal for the full period for which no interest has been paid) due on account of penalties \$.....dollars. Total amount due on said bond (here set forth the total of the foregoing items).

In order to avoid this sale, payment of the total amount above named will be required together with the cost of publications made before such payment and the additional interest accruing up to the date of payment.

In the event of sale, such sale will include interest in addition to the above total amount due accruing up to date of sale, the cost of publication of notice of sale, and one dollar for the issuing of certificate of sale. The.....(here name newspaper) is designated as the newspaper in which this notice shall be published.

Dated.....

Treasurer of the city of....."

The day named in the notice shall not be less than fifteen (15) days from the date of the first publication of the notice. (As amended Statutes 1923, p. 281.)

Mistake in notice.

A mistake of the treasurer in stating in the notice of sale an amount less than that which was due is without prejudice to the owner. *Chapman v. Jocelyn*, 182 Cal. 294.

Refusing to advertise.

Under Section 68 of the Improvement Act of 1911, as amended in 1919, the city treasurer was not justified in refusing to advertise the sale of the property. *Oakland Street Improvement Bond Company v. Fitz Maurice*, 47 Cal. App. 258.

Treasurer's affidavit.

69. An affidavit of the publisher of the newspaper in which the notice was published, or of someone in behalf of said publisher, setting forth a copy of the publication and stating that the publication was made in the said newspaper on specified dates shall be filed with the city treasurer and shall be primary evidence of the due publication of the notice. (As amended Statutes 1921, p. 294.)

Costs and Fees.

70. The city treasurer shall collect the sum of one dollar as hereinbefore mentioned, for the issuance of the certificate of sale, which sum shall belong to, and be subject to the disposition of the city; any person interested in the lot or parcel of land described in the notice of sale may at any time prior to the sale, pay the whole amount of principal of said bond remaining unpaid, the interest thereon compounded semi-annually up to the date of such payment, at the rate named in said bond upon such amount of said principal remaining unpaid for the whole period for which interest has not been paid, and all penalties which have accrued, together with the cost of the publication of the notice of sale; in such event the payment being made, the bond shall be canceled; but if such payment be not made, the sale shall be made as advertised; the lot or parcel described in the bond shall be sold to the purchaser who shall take the least amount of said lot or parcel and pay all of the sums specified in the notice of sale given by the treasurer. In the event that through error or otherwise the total amount for which said sale shall be made is less than that which may be required by the provisions hereof, and the holder of the bond is the purchaser at the sale and elects to accept the certificate of sale hereinafter mentioned, or if he accepts from the treasurer such sum derived from said sale made to some other purchaser, then the fact that the sale may have been made for less than the amounts specified herein shall not affect or invalidate the sale, and such receipt of said certificate or said sum shall be a waiver on the part of the holder of said bond, and the said deficient amount of sale shall be the amount upon which redemption from the sale shall be calculated to all effects the same as if the sale had been made for the full amount authorized hereby. (As amended Statutes 1923, p. 282.)

Certificate of treasurer.

71. The city treasurer, before delivering any certificate, must, in a book kept in his office for that purpose, enter the date, number, and series of the bond, a description of the land sold corresponding with the description of the certificate, the date of sale, purchaser's name, the amount paid, regularly number the descriptions on the margin of the book, and put a corresponding number on each certificate. Such book must be open to public inspection during office hours when not in actual use, and he shall enter on the record of the bond the words: "Cancelled by sale of the property," giving the date of such sale. (As amended Statutes 1921, p. 295.)

Lien on the Property.

72. Immediately on the sale, the purchaser shall become vested with a lien on the property, so sold to him, to the extent of his bid, and is only divested of such lien by the payment to the city treasurer of the purchase money, including costs herein provided for, inclusive of moneys paid for taxes, street improvement assessments, or other tax or statutory lien or to redeem from sale as hereinafter specified, and the fee of the recorder for recording the certificate of sale, with interest thereon at the rate of one per cent per month from the date of sale; the city treasurer shall issue for each sale an original and a duplicate certificate of sale reciting therein the date, number and series of the bond under which the sale was made, describing the land sold, and giving the date of sale, purchaser's name, amount paid, and the number of the certificate. He shall deliver the original certificate to the purchaser and shall record the duplicate in the office of the recorder of the county in which the land sold is situated. At any time after delivery to him by the city treasurer of said certificate of purchase the legal holder thereof may pay any general taxes, street improvement assessments, or any other tax or statutory lien upon the property described in said certificate of purchase which may be prior to his or redeem said property from any sale made in collection or enforcement of such general taxes, foreclosing street improvement assessments or other tax or statutory lien and the city treasurer, upon production by the holder of said certificate of purchase of the official receipt for the amounts so paid by him shall make an endorsement upon said certificate of purchase showing that said receipts have been so produced stating the nature of the lien paid, and the amount thereof and he shall make a like entry upon the book as provided in section 71 of this act, and shall collect the amount thereof as a part of the amount represented by said certificate of purchase together with interest thereon at the same rate as provided in the certificate of purchase. (As amended Statutes 1923, p. 282.)

Redemption.

73. A redemption of the property sold may be made by the owner of the property, or any party in interest, within twelve months from the date of purchase, or at any time prior to the application for a deed, as hereinafter provided; redemption must be made in lawful money of the United States, and when made to the city treasurer he must mark the word: "Redeemed," the date and by whom redeemed on the margin of the book where the entry of the certificate is made, and credit the amount paid to the purchaser named in the certificate, and pay the same to such purchaser, or his assignee, upon the surrender of the certificate of sale, and upon satisfactory proof of an assignment thereof, if any. (As amended Statutes 1921, p. 296.)

Recording certificate.

74. If the property is not redeemed within the time allowed by section seventy-three hereof for its redemption, the city treasurer, or his successor

in office, upon application of the purchaser or his assignee, must make to said purchaser, or his assignee, a deed to the property, reciting in the deed, substantially, the matter contained in the certificate, and that no person has redeemed the property during the time allowed for its redemption; the treasurer shall be entitled to receive from the purchaser two dollars for making said deed, which shall be deposited in the city treasury for the use of the city after payment has been made therefrom for the acknowledgment of said deed; provided, however, that the purchaser of the property, or his assignees must, thirty days prior to the expiration of the time of the redemption, or thirty days before his application for a deed, serve upon the owner or agent of the property purchased, if named in such certificate, and upon the party occupying the property, if the property is occupied, a written notice, stating that said property or a portion thereof, has been sold to satisfy the bond lien, the date of sale, the date number, and series of the bond, the amount then due, and the time when the right of redemption will expire, or when the purchaser will apply for a deed, and the owner of the property shall have the right of redemption indefinitely, until such notice shall have been given and said deed applied for, upon the payment of the fees, penalties and costs in this act required. In case of unoccupied property, a similar notice must be posted in a conspicuous place upon the property at least thirty days before the expiration of the time for redemption, or thirty days before the purchaser applies for a deed; and no deed to the property sold, in accordance with the provisions of this act, shall be issued by the city treasurer to the purchaser of such property, until such purchaser shall have filed with such treasurer an affidavit showing that the notice hereinbefore required to be given has been given as herein required, which said affidavit shall be filed and preserved by the said treasurer as other records kept by him in his office. Such purchaser shall be entitled to receive the sum of fifty cents for his service of such notice and the making of said affidavit, which sum of fifty cents shall be paid by the redemptioner at the time and in the same manner as the other sums, costs and fees are paid. (As amended Statutes 1921, p. 296.)

Deed to purchaser.

75. The deed, when duly acknowledged or proved, is primary evidence of the regularity of all proceedings theretofore had, and conveys to the grantee the absolute title to the lands described therein, as of the date of the expiration of the period for redemption, free of all encumbrances, except the lien for state, county and municipal taxes. (As amended Statutes 1921, p. 297.)

Absolute title.

76. In the event of the nonpayment of any installment of the interest or principal and by way of a separate, distinct and cumulative remedy, the holder of any bond upon which any payment either upon the principal or of the interest has not, or shall not be made when due, may file and maintain a suit to foreclose the lien of the bond in the same manner provided in this act for the foreclosure of the lien of delinquent assessments. The complaint in such suit shall be sufficient if a true copy of the bond be therein set forth

and true allegations made regarding the payments made upon the principal and interest thereon, and such suit shall be brought in the superior court within whose jurisdiction the city is by which the said bond has been issued and in case the owner of the lot, or parcel of land covered by said bond, cannot with due diligence be found, the service of such action may be had in the manner prescribed in the codes and laws of this state. The said bond, together with proof either orally by the said treasurer of the said city or by a certificate signed by him showing the nonpayment of any of the principal or interest upon said bond, shall be prima facie evidence of the right of the plaintiff to recover in said action. The court in which said suit shall be commenced shall have the power to adjudge and decree a lien against the lot or parcel of land covered by said bond and to order said premises to be sold on execution as in other cases of the sale of real estate by the process of said court, and the amount of interest due shall be calculated in the same manner hereinbefore set forth in section sixty-eight hereof, up to the date of the signing of the judgment. On appeal, the appellate courts shall have the same power to adjudge and decree a lien and to order such premises to be sold on execution of decree as is conferred on the court from which an appeal is taken. The court shall also fix and allow a reasonable attorney's fee for the prosecution of said suit. Such premises, if sold, may be redeemed as in other cases. Such action shall be governed and regulated by the provisions hereof, and also when not in conflict herewith, by the codes of this state. (As amended Statutes 1921, p. 297.)

Deeds are prima facie evidence of regularity.
Empire Securities Co. v. Matthews, 179 Cal.
 239.

Chapman v. Jocelyn, 182 Cal. 294.

Railroad property.

77. Whenever any railroad track or tracks of any description exist upon the street or streets upon which the city council of any city has ordered an improvement to be made, and has excepted therefrom the portions used by the track, between the rails and for two feet on each side thereof, and between the tracks if there is more than one, the said order, unless said city council shall by resolution theretofore passed have declared to the contrary, shall be deemed to be and constitute a requirement that the person or company having said railroad track or tracks thereon shall improve the said portion with improvements similar in all respects to, with the same materials, under the same specifications and superintendence, and to the like inspection and satisfaction as those ordered to be performed by said order ordering the work; provided, however, that the city council may by ordinance require increased depth of concrete between, to the full depth of, or under the ties, or both, where and whenever the city council shall, in its judgment decide that this method of construction is necessary. The city council may also require by ordinance or otherwise, any person or company aforesaid, to pave alongside of and contiguous to its rails with special types of brick or paving blocks. The resolution of intention and notice of proposed improvement shall be construed and are hereby declared to be notice to said person or company of the in-

tention to order the same. Thereupon it shall be the duty of said person or company, having such track or tracks on such street or streets to notify in writing the superintendent of streets if such person or company elects to enter upon the direct performance of such work at its own charge and expense; said notice must be delivered to the superintendent of streets within ten days after the first publication of notice of award of contract. The omission or neglect to make such election shall be construed as constituting the superintendent of streets the agent of the owner of said track or tracks, with authority to enter into a contract made in accordance with the provisions of this section for making the said improvements. Said superintendent of streets shall advertise for bids for the improvement of said portions of the street or streets lying between the rails and for two feet on each side thereof, and between the tracks, if there be more than one. It shall be the duty of said city council to award the contract for the making of said improvements to the lowest regular responsible bidder. Such bidding and awarding of contracts shall be made in the same manner hereinbefore provided for the awarding of contracts for improvements excepting that no notice of award shall be published. Immediately upon the award, the superintendent of streets shall enter into a contract with the person to whom said contract was awarded for the making of said improvement or improvements upon the portions of the street or streets described in said notice inviting bids, and at the price stated in said bid. The contractor shall execute bonds in the manner required by Section 15 of this act. Upon the completion of the work and its acceptance, the street superintendent shall make a certificate of such completion, together with a statement of the amount due under the terms of said contract for the performance of said work. Such certificate shall be countersigned by the mayor of said city, and shall be recorded in the office of said superintendent of streets. The contractor thereupon shall be entitled to payment of the full amount of said contract price, and the recording of such certificate shall be sufficient notice to the owner of such track or tracks that said contract price is due and payable. In the event that such amount is not paid within thirty days from the date of the recording of said certificate, the contractor may file a sworn statement to that effect with the superintendent of streets, who shall record the same in his office in the book in which the certificate of acceptance has been recorded. Said contractor shall thereupon have a cause of action against said person or company owning said tracks for the amount of said contract, together with a reasonable attorney's fee, and shall also have as a security for the recovery of such amount, a first lien upon the track and franchises of said railroad, between whose rails or tracks the said work has been performed, contained within the corporate limits of the said city. In such suit, the certificate of the superintendent of streets, hereinbefore mentioned, shall be and constitute prima facie evidence of the regularity of all proceedings, and of the right of the contractor

to recover judgment against said person or company. Execution may be taken out upon the entry of judgment, and levied upon any property of said person or company subject to execution. In the event that said person or company shall file the written election to enter upon the direct performance of such work at its own cost and expense, no further proceedings shall be taken in the matter unless such person or company neglects or fails for thirty days, or for such further time as the city council may grant, to make said improvement. In the event that the improvement of the portions of the street or streets above described between the rails and for two feet on each side thereof, and between the tracks, if there be more than one, shall not be made with diligence, as herein provided or in all respects similar to the improvement of the rest of the street, or with the same materials or under the same specifications, and to the satisfaction of the superintendent of streets, the city council of said city may, by resolution entered in its minutes, prescribe such terms and conditions as to it may seem fit and proper before permitting the said person or company to continue with the said improvement. If the said person or company shall, after three days' notice of the adoption of said resolution, fail to comply with the terms and conditions so prescribed, the city council may declare said person or company to have forfeited its privilege of performing such work under its own direction. Whereupon the street superintendent shall advertise for bids for the performance of such work, or such portion thereof as may remain uncompleted, and the contract therefor shall be awarded and entered into in the same manner hereinbefore provided for the awarding and execution of contracts where said person or company has not elected to make the improvements under its own direction; and upon the completion of the improvement, the contractor to whom such contract may be awarded, or his assigns, shall be entitled to a certificate from the street superintendent similar to that hereinabove provided for, and shall have the right to collect from said person or company by suit the amount specified in said certificate in all respects the same as hereinbefore provided where the contract is let for such improvement in the first instance. The city council may, by ordinance, prescribe and enforce such additional regulations and penalties as it may deem necessary to compel the improvement as herein provided of any portion or portions of any such street or streets so occupied by any such railroad track or tracks.

Improvements by railroad companies.

77a. Whenever any railroad track or tracks of any description exist upon any street in any city which has been paved, macadamized, graveled, capped, or oiled either for the whole or any portion of the width of the roadway thereof along or near the line of such railroad track or tracks, and the roadbed thereof has not been improved similar in all respects to and with the same materials as such street along the line of such track or tracks; or where any portion of such roadbed, whether so improved or not is out of repair or is not on the official

grade of such street or has small hummocks or ridges or loose rock upon or along such roadbed or the materials composing such roadbed next to the rails of such track or tracks are not flush with the top of such rails or the sides thereof, the city council of any city may, by resolution, require and order the person or company having or owning such railroad track or tracks to improve the roadbed thereof by making repairs or by bringing the roadbed to the official grade or removing the hummocks or ridges or loose rock upon or along such roadbed or making the roadbed and the materials thereof flush with the top or sides of the rails of such track or tracks. Such city council may require and order any or all of said work or improvement as may be designated in such resolution and to be done in the manner therein designated.

The city council may also require, by resolution, any person or company aforesaid to pave alongside of and contiguous to its rails with special type of brick or paving blocks or other material.

The resolution to require and order said work or improvement shall be personally served upon the person or company having or owning such railroad track or tracks, or service thereof may be made upon any agent or representative of such person or company or any officer of such company, and upon such service being made, such resolution shall be construed and is hereby declared to be notice to said person or company of the intention to order the work or improvement as designated in such resolution.

Thereupon, it shall be the duty of said person or company to notify, in writing, the superintendent of streets of the city where such work or improvement is to be done, if such person or company elects to enter upon the direct performance of such work or improvement at his or its own charge or expense. Said notice must be delivered to the said superintendent of streets within ten days after the service of such resolution as aforesaid.

The omission or neglect to make such election by delivering such notice shall be construed as constituting the superintendent of streets the agent of the owner of said track or tracks with authority to enter into a contract made in accordance with the provisions of this section for doing said work and making said improvements.

Said superintendent of streets shall thereupon be vested with authority to and he shall advertise for bids for said work or improvement for at least two days in some newspaper published and circulated in such city, and fix the time in such notice for receiving bids not less than five days from the first publication thereof.

It shall be the duty of such city council to award the contract for doing said work or making said improvements to the lowest regular, responsible bidder.

All bids offered shall be accompanied by a check or by a bond and shall be delivered, opened and award of contract made, all as provided

by Section 10 of said act, except that no notice of award shall be published.

Upon the award being made, the superintendent of streets shall enter into a contract with the person to whom said contract was awarded for doing said work or making said improvement described in said notice inviting bids, and at the price stated in said bid.

The contractor shall execute bonds in the manner required by Section 15 of said act. Upon the completion of the work and its acceptance, the street superintendent shall make a certificate of such completion, together with a statement of the amount due under the terms of said contract for the performance of said work. Such certificate shall be countersigned by the mayor of said city, and shall be recorded in the office of said superintendent of streets. The contractor thereupon shall be entitled to payment for the full amount of said contract price, and the recording of such certificate shall be sufficient notice to the owner of such track or tracks that said contract is due and payable. In the event that such amount is not paid within thirty days from the date of the recording of said certificate, the contractor may file a sworn statement to that effect with the superintendent of streets, who shall record the same in his office in the book in which the certificate of acceptance has been recorded. Said contractor shall thereupon have a cause of action against said person or company owning said tracks for the amount of said contract, together with a reasonable attorney's fee, to be fixed by the court, and shall also have as a security for the recovery of such amount, a first lien upon the track and franchises of said railroad contained within the corporate limits of the said city. In such suit, the certificate of the superintendent of streets, hereinbefore mentioned, shall be and constitute prima facie evidence of the regularity of all proceedings, and of the right of the contractor to recover judgment against said person or company. Execution may be taken out upon the entry of judgment, and levied upon any property of said person or company subject to execution. In the event that said person or company shall file the written election to enter upon the direct performance of such work at its own cost and expense, no further proceedings shall be taken in the matter unless such person or company neglects or fails for thirty days, or for such further time as the city council may, by resolution, grant, to make and complete said work or improvement.

In the event that the said work or improvement shall not be made with diligence as herein provided, the city council of said city may, by resolution entered upon its minutes, prescribe such terms and conditions as to it may seem fit and proper before permitting the said person or company to continue with the said improvement. If the said person or company shall, after three days' notice of the adoption of said resolution, fail to comply with the terms and conditions so prescribed, the city council may, at any time thereafter, declare said person or company to have forfeited its privilege of performing such work

or improvement under its own direction. Whereupon the street superintendent shall advertise for bids for the performance of such work, or such portion thereof as may remain uncompleted, and the contract therefor shall be awarded and entered into in the same manner hereinbefore provided for the awarding and execution of contracts where said person or company has not elected to make the improvements under its own direction; and upon the completion of the improvement, the contractor to whom such contract may be awarded, or his assigns, shall be entitled to a certificate from the street superintendent similar to that hereinabove provided for, and shall have the right to collect from said person or company by suit the amount specified in said certificate in all respects the same as hereinbefore provided where the contract is let for such work or improvement in the first instance. The city council may, by ordinance, prescribe and enforce such additional regulations and penalties as it may deem necessary to compel the work or improvement as herein provided of any portion or portions of any such street or streets so occupied by any such railroad track or tracks.

The word "roadbed" herein used shall be deemed to embrace that portion of any street used by the track of any railroad between the rails and for two feet on each side thereof and between the tracks if there is more than one, including the rails of such track or tracks. (Added by Statutes 1913, p. 540.)

No protests.

78. None of the provisions of Part I of this act in regard to a protest against the work shall apply to any work contemplated by the preceding section. All provisions of Part I of this act not inconsistent with the provisions hereof shall apply hereto.

PART IV.

Definitions.

79. First. The person owning the fee, or the person in whom, on the day the action is commenced, appears the legal title to the lots and lands, by deeds duly recorded in the county recorder's office of each county, or the person in possession of land, lots, or portions of lots or buildings under claim, or exercising acts of ownership over the same for himself, or as the executor, administrator, or guardian of the owner, shall be regarded, treated, and deemed to be the "owner" (for the purpose of this law), according to the intent and meaning of that word as used in this act. And in case of property leased, the possession of the tenant or lessee holding and occupying under such persons shall be deemed to be the possession of such owner.

Second. The words "work," "improve," "improved," and "improvement," as used in this act, shall include all work mentioned in this act, and also the construction, reconstruction and repairs, of all or any portion of said work.

Third. The term "incidental expenses," as used in this act, shall include the compensation of the city engineer for work done by him;

also, the cost of printing and advertising as provided in this act; also, the compensation of the person appointed by the superintendent of streets to take charge of and superintend any of the work mentioned in this act; also the expenses of making the assessment for any work authorized by this act. All demands for incidental expenses mentioned in this subdivision shall be presented to the street superintendent by itemized bill, duly verified by oath of the demandant.

Fourth. The notices, resolutions, orders or other matter required to be published by the provisions of this act, shall be published in a daily newspaper, in cities where such there is, and where there is no daily newspaper, in a semi-weekly or weekly newspaper, to be designated by the council of such city, as often as the same is issued, and no other statute shall govern or be applicable to the publications herein provided for, provided, however, that in case there is no daily, semi-weekly or weekly newspaper printed and circulated in any such city, then such notices, resolutions, orders or other matters as are herein required to be published in a newspaper, shall be posted and kept posted for the same length of time as required herein for the publication of the same in a daily, semi-weekly or weekly newspaper, in three of the most public places in such city except where herein otherwise specifically provided. Proof of the publication of posting of any notice provided for herein shall be made by affidavit of the owner, publisher, printer or clerk of the newspaper, or of the poster of the notice. No publication, or notice, other than that provided for in this act, shall be necessary to give validity to any of the proceedings provided for therein. The word "twice" as used in this act, referring to the number of times notices, resolutions or other matters shall be published, shall be held to mean the publication of the same in two entire issues of a newspaper, one being on one day and the other issue being on a subsequent day of the same or a subsequent week.

A delay in affidavits.

A delay in filing affidavits does not invali-

date the assessment. *Bailey v. Hermosa Beach*, 183 Cal. 757.

Fifth. The word "municipality" and the word "city," as used in this act, shall be understood and so construed as to include, and is hereby declared to include, all corporations heretofore organized and now existing, and those hereafter organized, for municipal purposes.

Sixth. The words "paved," or "repaved," as used in this act, shall be held to mean and include pavement of stone, whether paving blocks or macadamizing, or of bituminous rock or asphalt, or of iron, wood or other material, whether patented or not, which the city council shall by ordinance or resolution adopt.

Seventh. The word "street," as used in this act, shall be deemed to, and is hereby declared to, include avenues, highways, lanes, alleys, crossings, or intersections, courts and places, which have been dedicated and accepted according to law or in common and undisputed use by the public for a period of not less than five years next preceding, and the term "main street" means such actually opened street or

streets as bound a block; and the word "blocks," whether regular or irregular, shall mean such blocks as are bounded by main streets, or partially by a boundary line of the city.

Eighth. The terms "street superintendent" and "superintendent of streets," as used in this act, shall be understood and so construed as to include, and are hereby declared to include, any person or officer whose duty it is, under the law, to have the care or charge of the streets, or the improvement thereof in any city. In all those cities where there is no street superintendent or superintendent of streets, the city council thereof is hereby authorized and empowered to appoint a suitable person to discharge the duties herein laid down as those of street superintendent or superintendent of streets; and all provisions hereof applicable to the street superintendent or superintendent of streets shall apply to such person so appointed.

Ninth. The term "city council" is hereby declared to include any body or board which, under the law, is the legislative department of the government of any city.

Tenth. In municipalities in which there is no mayor, then the duties imposed upon said officer by the provisions of this act shall be performed by the president of the board of trustees, or other chief executive officer of the municipality.

Eleventh. The terms "clerk" and "city clerk," as used in this act, are hereby declared to include any person or officer who shall be clerk of the said city council.

Twelfth. The term "quarter block," as used in this act, as to irregular blocks, shall be deemed to include all lots or portions of lots having any frontage on either intersecting streets half way from such intersection to the next main street, or, where no main street intervenes, all the way to a boundary line of the city.

Thirteenth. The term "city treasurer" as used in this act shall be held to mean and include any person who, under whatever name or title, is the custodian of the funds of the municipality.

"Places" defined.

79a. The word "places" as used in this act, shall be deemed to, and is hereby declared to include any public pleasure ground and common which has been dedicated and accepted according to law, and this act shall include the improvement of a public pleasure ground and common. (New section approved April 22, 1913, Stats. 1913, p. 57, in effect August 10, 1913.)

Hearings.

80. Whenever in proceedings hereunder, a time and place for hearing by the city council is fixed, and, from any cause, the hearing is not then and there held or regularly adjourned to a time and place fixed, the power of the city council in the premises shall not thereby be devested or lost, but the city council may proceed anew to fix a time and place for the hearing, and cause notice thereof to be given by pub-

lication by at least one insertion in a daily, semi-weekly or weekly newspaper, such publication to be at least five days before the date of the hearing, and thereupon the city council shall have power to act as in the first instance.

Publication and posting.

81. Whenever any resolution, order, notice, or determination is required to be published or posted, and the duty of posting or procuring the publication or posting of the same is not specifically enjoined upon any officer of the city, it shall be the duty of the city clerk to post or procure the publication or posting thereof, as the case may be. No proceeding or step herein shall be invalidated or affected by any error or mistake or departure herefrom as to the officer or person posting, or procuring the publication or posting, of any resolution, notice, order or determination hereunder when the same is actually published or posted for the time herein required.

Construction of act.

82. This act shall be liberally construed to the end that its purposes may be effective. No error, irregularity, informality, and no neglect or omission of any officer of the city, in any procedure taken hereunder, which does not directly affect the jurisdiction of the city council to order the improvement, shall avoid or invalidate such proceeding or any assessment for the cost of work done thereunder. The exclusive remedy of any person affected or aggrieved thereby shall be by appeal to the city council as herein provided.

Saving clause.

83. This act shall in no wise affect an act entitled "An act to provide for work upon streets, lanes, alleys, courts, places and sidewalks, and for the construction of sewers within municipalities," approved March 18, 1885; or an act entitled "An act to provide a system of street improvement bonds to represent certain assessments for the cost of street work and improvement within municipalities, and also for payment of said bonds," approved February 27, 1893; or an act entitled "An act to provide for local improvements upon streets, lanes, alleys, courts, places and sidewalks, and for the construction of sewers within municipalities, such act to be known as the 'Local Improvement Act of 1901'," which became a law February 26, 1901, or an act entitled "An act to provide for the improvement of public streets, lanes, alleys, courts, and places in municipalities, in cases where any damage to private property would result from such improvement, and for the assessment of the costs, damages and expenses thereof upon the property benefited thereby," which became a law April 21, 1909, or amendments to any of said acts, or any other acts on the same subject, or apply to proceedings had thereunder, but is intended to and does provide an alternate system for making the improvements provided for by this act; and it shall be in the discretion of the legislative body of

any city to proceed, under the provisions either of this act or of such other acts; but when any proceedings are commenced under this act, the provisions of this act, and of such amendments thereof as may be hereafter adopted, and no other, shall apply to all such proceedings, and any provisions contained in said acts or any acts in conflict herewith shall be void and of no effect as to the proceedings commenced under this act. This act may be designated and referred to as the "Improvement Act of 1911," and shall take effect and be in force on its passage and approval.

Sections 84, 85, 86, 87, 88 and 89, relating to the doing of work in unincorporated territory. (Repealed by Statutes 1915, p. 1477.)

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IMPROVEMENT BOND ACT OF 1915

An act to provide for the issuance of improvement bonds to represent and be secured by certain assessments made for the cost of certain work and improvements made in and upon streets, avenues, lanes, alleys, courts, places and sidewalks within municipalities and upon property and rights of way owned by municipalities, to provide for the collection of such assessments, the sale of the property affected thereby and for the payment of the bonds so issued.

(Approved June 11, 1915, Statutes 1915, p. 1441. Amended Statutes 1917, p. 209. Amended Statutes 1921, p. 224. Amended Statutes 1923, pp. 301, 414.)

Serial bonds may issue.

Section 1. The city council of any municipality in this state shall have power in its discretion, to determine that serial bonds shall be issued in the manner and form hereinafter provided to represent and be secured by the assessments which shall be made to pay for the cost of any work or improvement which shall be made in any one or more of the streets, avenues, lanes, alleys, courts, places or public ways of any such city, or in, over or through any property or rights of way owned by such city, which work and improvement shall include any and all work and improvements, the doing of which is provided for in the street work acts hereinafter referred to.

Bonds not a general obligation.

Bonds of the Improvement Bond Act of 1915 are not a general obligation of the city but

are payable exclusively from the redemption fund created by the act. *Steger v. City of Richmond*, 194 Cal., 305.

Street work acts affected.

Sec. 2. Whenever in this act the phrase "street work act" is used, it means and shall be taken to mean "An act to provide for work upon streets, lanes, alleys, courts, places and sidewalks and for the construction of sewers within municipalities," approved March 18th, 1885, and all acts amendatory thereof or supplementary thereto, and also the act entitled "An act to provide for work in and upon streets, avenues, lanes, alleys, courts, places and sidewalks within municipalities, and upon property and rights of way owned by municipalities, and for establishing and changing the grades of any such streets, avenues, lanes, alleys, courts, places and sidewalks, and providing for the issuance and payment of street improvement bonds to represent certain assessments for the cost thereof and providing a method for the payment of such bonds," approved April 7th, 1911, and designated "improvement act of 1911," and all acts amendatory thereof or supplementary thereto, and also any and all other acts for the doing of work and making of other improvements within municipalities whereby the cost of the whole or any portion of such work or improvements is charged

and assessed upon real property; and for any proceeding instituted under either of said acts shall be held to apply exclusively to the act under which any such proceeding was instituted.

Bonds when and where payable.

Sec. 3. Said bonds shall be issued in series and an even annual proportion of the aggregate principal sum thereof shall be payable on the second day of July every year succeeding the first ten months after their date, until the whole is paid, and the said bonds shall bear interest at a rate of not to exceed eight per cent per annum from the date of filing the unpaid assessment list with the city clerk as provided in the street work act, on all sums unpaid, until the whole of said principal sum and interest are paid, which interest shall be payable semi-annually by coupon, on the second days of January and July, respectively of each year; *provided*, that the first payment of interest shall not come due till six months before the maturity of the first series of bonds. The final series or installment of said bonds shall mature and be payable on a date which shall not exceed fourteen years from the second day of July next succeeding ten months from their date. Said bonds and interest shall be paid at the office of the city treasurer of said municipality who shall keep a redemption fund designated by the name of said bonds, into which he shall place all sums received by him from the collection of the assessments made for the payment of the cost of the work or improvements upon which the said bonds are issued and of the interest and penalties thereon and from which fund he shall disburse and pay the said bonds and the interest due thereon upon presentation of the proper bonds and coupons; and under no circumstances shall said bonds or the interest thereon be paid out of any other fund. Said city treasurer shall keep a register in his office which shall show the series, number, date, amount, rate of interest, and last known holder of each bond, and the number and amount of each coupon of interest paid by him, and shall cancel and file each bond and coupon so paid. (As amended Statutes 1923, p. 301.)

Time of bonds to run.

Under the 1915 Bond Act it is not necessary to specify the definite time in which the bonds are to run, providing the maximum time is mentioned. *Shepherd v. Chapin et al.*, 45 Cal. App. 645.

When assignee of bonds is bound by judgment.

Where assignee of street bonds had notice of an action to quiet title to the property affecting such bonds he was bound by the judgment rendered. *Bates v. Berry*, 63 Cal. App. 505.

Declaration in resolutions and notices.

Sec. 4. When said city council shall determine that serial bonds shall be issued hereunder to represent the expense of any proposed work or improvement under said street work act it shall so declare in the resolution of intention to do said work and shall specify the rate of interest which they shall bear. The like description of said bonds shall be inserted in the assessment issued by the superintendent of streets to the contractor. Said bond declaration may be substantially in the following form: "Notice is hereby given that serial bonds to represent unpaid assessments, and bear interest at the rate of per cent per annum, will be issued hereunder in the manner provided by the improvement bond act of 1915, the last installment of which bonds shall mature years from the second day of July next succeeding ten months from their date." (As amended Statutes 1923, p. 302.)

Issuance of bonds.

Sec. 5. After confirmation of the assessment by the city council and after the return of the warrant attached thereto and after the filing of the statement of payments received upon the assessment by the contractor as provided in said street work act, the street superintendent shall make and file with the clerk of the city council a complete list of all assessments unpaid, upon any assessment. Said clerk shall then give notice of the filing of said list and of a time, to be therein fixed by said clerk, when interested persons may appear before the city council and show cause why bonds should not be issued upon the security of the unpaid assessments shown on said list. Such notice shall be posted for not less than five days on or near the council chamber door and be published twice in a newspaper published in such city, if there be any, the first of which publications shall be not less than five days before the time fixed for such hearing. Such notice shall also be given by mailing same to the owner of each lot listed according to the name and address appearing on the last equalized assessment roll for city taxes prior thereto, or as known to the clerk; *provided*, that a failure of the clerk to give such notice by mailing or of the person addressed to receive same shall not affect the jurisdiction of the council to proceed with the hearing noticed. Reference shall therein be made to the resolution of intention and the date of its passage for a description of the work therein mentioned and no other description thereof shall be necessary. The council shall at the date so fixed hear any objection so presented and shall pass upon the same and shall thereupon determine the assessments which are unpaid and the aggregate amount of same. If it does not so meet it may hear the matter at its first adjourned or regular meeting thereafter. It may adjourn the hearing from time to time. Its decision shall be final. The city council shall then prescribe the denominations of such bonds, which shall be in convenient amounts not necessarily equal, and shall provide for issuance of same in annual series. Said bonds shall be forthwith delivered to said contractor in satisfaction of the balance due him upon his assessment and warrant. (As amended Statutes 1923, p. 302.)

Form of Bond.

Sec. 6. Said bonds shall each be substantially in the following form:

Improvement Bond.

City (or other form of municipality) of
(naming it)

\$..... No.....

Under and by virtue of the act of the legislature of the State of California, entitled (title of this act) the..... of..... (a municipal corporation) will on the second day of July, 19....., out of the redemption fund for the payment of the bonds issued upon the assessments made for the work upon and improvements on certain streets (or on..... street, or in improvement district No....., or on certain rights of way owned by, or by other suitable description), more fully described in

the certain resolution of intention passed by the city council (or other board) of said municipality on the.....day of....., 19....., pay to bearer, the sum of.....dollars (\$.....), with interest thereon from the.....day of....., 19....., at the rate of.....per cent per annum, all as is hereinafter specified, and at the office of the treasurer of said municipality.

This bond is one of several annual series of bonds of like date, tenor and effect, but differing in amounts and maturities, issued by said municipality under said act for the purpose of providing means for paying for the work and improvements described in said resolution of intention, and is secured by the moneys in said redemption fund and by the unpaid assessments made for the payment of said work, and, including principal and interest, is payable exclusively out of said fund.

The interest is payable semiannually, to wit: On the second days of January and July in each year hereafter, upon presentation of the proper coupons therefor; provided, that the first of said coupons is for the interest to the second day of January, 19....., and thereafter the interest coupons are for the semiannual interest.

This bond will continue to bear interest after maturity at the rate above stated; provided, it is presented at maturity and payment thereof is refused upon the sole ground that there is not sufficient moneys in said redemption fund with which to pay same. If it is not presented at maturity interest thereon will run until maturity.

This bond may be redeemed and paid in advance of maturity upon the second day of January or July in any year by giving the notice provided in said act and by paying principal and accrued interest together with a premium equal to five per centum of the principal.

In witness whereof, said.....of.....
.....has caused this bond to be signed by the
treasurer of said.....and by its clerk and has
caused its clerk to affix thereto its corporate seal all on the.....
day of....., 19.....

.....
Treasurer.

.....
Clerk.

(Seal)

(As amended Statutes 1921, p. 226.)

Coupons.

Sec. 7. The coupons affixed to said bonds shall be signed by the treasurer, and the city council may by order provided in its discretion for the use upon said coupons of an engraved, printed or lithographed signature of the treasurer in place of a signature by hand. The bonds shall have semi-annual coupons attached thereto, the first of which shall be payable upon the second day of January next before the maturity of the first series of

bonds coming due, and shall be for the interest accrued at that time. (As amended Statutes 1917, p. 213.)

Annual series.

Sec. 8. The bonds so issued shall be payable to the party to whom they issue, or bearer, and shall be issued in series, as is hereinbefore described, and shall bear interest at the rate specified in the resolution of intention to do said work. The bonds maturing in any year shall constitute the annual series of that year and the aggregate principal of the bonds in such series shall equal the even annual proportion of the aggregate principal sum of the entire bond issue hereinbefore referred to. Said bonds, by their issuance, shall be conclusive evidence of the regularity of all proceedings had prior thereto under this act and under said street work act.

Advanced maturity.

Sec. 9. The city treasurer may advance the maturity of any bond to the second day of January or July in any year and pay and cancel the same whenever there shall be surplus moneys in the redemption fund with which to pay same, by giving notice of such redemption as herein provided. Such notice may be given in writing to the holder or owner thereof by registered mail or personal service, or it may be addressed "To whom it may concern" and be given by publication twice in a daily or weekly newspaper published in said city; *provided*, that if such notice be so given by publication or posting then a copy of same shall be mailed to the last known holder or owner thereof at his last known address at least sixty days prior to such date of advanced maturity. If the service be made personally it shall be made at least sixty days before the date fixed for advanced maturity; if by registered or other mail the mailing shall be made at least sixty days before such date; if by publication or posting the first publication or posting shall be made at least sixty days before such date. In the event of such notice being given, the maturity of such bond shall be advanced and said bond shall be deemed to mature on the date fixed for the advanced maturity of same, at which time the same shall be paid; *provided, however*, that the holder or owner of such bond may prior thereto surrender same and receive the principal thereof together with interest thereon to date of payment and together with a premium thereon equal to five per centum of the principal. On said second day of January or July fixed for advanced maturity, if said bond has not been sooner surrendered, the treasurer shall set aside to the credit of the owner of said bond the amount of principal and accrued interest then due on said bond together with such premium of five per centum of the principal, and said bond shall then be deemed to have matured and interest thereon shall thereafter cease to accrue on said bond. The amount so set aside shall on demand be paid to the holder or owner of said bond on surrender and cancellation of the same. The costs of such advertising, or other service, shall be paid from the redemption fund. More than one bond may be covered in a single notice. Prior to the surrender of any bond or the setting aside of said funds, the treasurer may waive and vacate any notice of advanced maturity

upon being tendered for cancellation some other bond or bonds of an equivalent amount and of a maturity not earlier than that noticed; providing, that ten days' notice of his intention so to do shall have first been given by mail or otherwise to the holder or owner of said bond and such holder or owner shall not have objected to such action. In selecting bonds for retirement, the treasurer will choose the bond of earliest maturity that is feasible; conditioned, nevertheless, on provision being made for returning to owners releasing unpaid assessments under section fifteen hereof all interest not accrued less any premium and interest paid on bonds redeemed besides costs of publication as therein provided. (As amended Statutes 1923, p. 303.)

Registration of bonds.

Sec. 10. Said bonds may be surrendered by the holder to the treasurer for registration in accordance with the provisions of any law applicable to the registration of the municipal bonds of the city, and thereafter the principal and interest thereon shall be paid to the proper registered owner thereof.

Unpaid assessments a trust fund.

Sec. 11. (a) In the event of such bonds being so issued, then the assessments, which shall be unpaid, as shown on the list filed by the superintendent of streets and determined by the city council, and any reassessments which may be issued thereon or in lieu thereof, together with interest thereon, shall remain and constitute a trust fund for the redemption and payment of said bonds and of the interest which may be due thereon. Such assessments and reassessments and each installment thereof and the interest and penalties thereon shall be and shall continue to constitute a lien against the lots and parcels of land on which made, until the same be paid, but for a period not exceeding the time within which an action might be brought on the last series of bonds issued upon the security of such unpaid assessments. Such lien shall be prior and superior to all other liens, except the lien for state, county and municipal taxes and public improvement assessments and reassessments which may have priority thereover; *provided, however*, that unmatured installments, interest and penalties shall not be deemed to be within the terms of any general warranty of title.

(b) Whenever any assessment heretofore issued or which may be hereafter issued is or shall be void or unenforceable, for any cause, or if bonds shall have been, or shall be, issued hereunder to represent or be secured by any assessments and such issuance shall not have been or shall not be effective through the curative provisions in relation thereto under said street work act or under this act to make them valid and enforceable, then, in any such events a reassessment therefor may be issued. Such reassessment shall be issued upon the demand of the owner or holder of bonds aggregating one-third of the principal amount outstanding and shall be issued and made in the manner and form provided by said street work act. When so issued the reassessment made shall stand and constitute a trust fund for the redemption and payment of the original bonds so issued; *provided*, that the

city council may call in the original issue of bonds outstanding and issue new bonds upon the security of the reassessment in lieu thereof. The city council may determine that new serial bonds shall be issued upon the security of such reassessment, in which event it shall so declare in the notice of hearing upon such reassessment and set forth therein the description of said bonds as provided for in section four hereof. In such event upon confirmation of the reassessment said council may issue said bonds after notice by the clerk as provided in section five thereof. Upon calling in by the city council of the original issue of bonds outstanding, the council may direct the City treasurer to, and the treasurer shall thereupon, advance the maturity of said bonds outstanding bearing interest in the manner provided in section 9 hereof, notwithstanding that there may not be surplus moneys in the redemption fund with which to pay same. Such new bonds shall be issued in an aggregate amount equal to the total balance of the reassessment unpaid and shall bear interest from the date of recordation of the reassessment at the rate fixed by the council. After such issuance of said new bonds and upon surrendering of the bonds outstanding, new bonds shall be issued ratably to the holders of the original bonds outstanding, each holder of such original bonds being entitled to such proportion of the new bonds as the total amount of the principal and interest due him on his original bonds, as of the date of such recordation of the reassessment, bears to the total amount of the principal of such new bonds. In making distribution the council shall have authority to assign the different bonds and allot maturities in such manner as to it shall seem equitable.

(c) In the event of nonpayment of any assessment or reassessment or installment thereof, or of any interest thereon, and as a cumulative remedy, the same when due as hereinafter provided, may by order of the council be collected by suit brought to foreclose the lien thereof in the same manner as provided in said street work act for the foreclosure of other assessments by action in a superior court, and with like costs, attorneys' fees and other relief. Thereupon the tax collector shall be credited upon the assessment roll then in his hands with the amount charged against him on account of such assessments or reassessments ordered to suit and be relieved of further duty in regard thereto.

(d) Such action shall be brought in the name of the city. The complaint may be brief and include substantially only the following allegations with reference to the assessments sought to be collected: that on a date stated the council passed its resolution ordering certain work to be done, without describing the same; that work was done thereunder, that an assessment and warrant to pay for the cost thereof was duly given and made; that same was returned on a stated date; that certain property (describing it) was therein assessed a stated amount; that bonds upon the security of such assessment were duly issued giving the date of said bonds their interest rate and the number of years the last installment of same were to run and that same were duly issued under this act, but it shall be unnecessary to state the amount, number, denomination or other term thereof; that on a date stated a certain sum came due against said property on said assessment and had not been paid and that the council had directed the action to

foreclose. In such action the plaintiff upon recovering judgment shall be entitled to a reasonable counsel fee to be allowed by the court and taxed as costs. (As amended Statutes 1923, p. 414.)

Assessments payable in installments.

Sec. 12. Such unpaid assessments shall be payable in annual series corresponding in number to the number of series of bonds issued and an even annual proportion of each assessment shall be payable in each year preceding the date of maturity of each of the several series of bonds so issued. Such annual proportion of each assessment coming due in any year, together with the annual interest on such assessment, shall in turn be payable in annual or semi-annual installments according as the general municipal taxes of such city on real property are payable in annual or semi-annual installments, and such installments and said annual interest shall be payable and become delinquent at the same times and in the same proportionate amounts and bear the same proportionate penalties and interest after delinquency as to the general municipal taxes on real property of said city. Upon default in payment, the lands securing such installments and assessments shall be sold in the same manner in which real property in such city is sold, for the nonpayment of general municipal taxes, and be subject to redemption within one year from date of sale in the same manner as such real property is redeemed from such delinquent sale, and upon failure of such redemption shall in like manner pass to the purchaser. The city may be the purchaser at any delinquent sale in like manner in which it becomes or may become the purchaser of property sold for nonpayment of the general municipal property tax, and in the event of its so becoming the purchaser shall pay and transfer into said redemption fund the amount of the delinquent assessment and of the delinquent interest thereon upon which said sale is made. In cases where the municipal property tax is collected by county or city and county officials and sales for nonpayment of such taxes are made to the state, the state shall be the purchaser at any such sale hereunder, but shall hold the title acquired at such sale upon behalf of the city and shall account to the city for any moneys received upon redemption or from the sale of such property, the city for the purposes of this act being deemed the real purchaser. In other cases where under the law the city is not always the purchaser at sales for delinquent municipal taxes, the city shall become such purchaser at any delinquent sale hereunder where there is no other purchaser. In the event of there being no available funds in the treasury with which to make such payment, the tax collector shall delay the entry of the certificate of sale until such funds are available, making demand in the meantime upon the city council that a suitable amount be included in the next tax levy for the purpose of providing funds with which to make such payment; *provided, however*, that the period of redemption from such tax sale shall not be extended thereby nor the rights or privileges of the property owner be thereby in any wise affected. In the event of such purchase being made by the city and of any succeeding installment of such assessment or of such interest not being paid in any future year, the property shall not be sold unless there has previously been a redemption from such sale or unless

under the law it is then being sold for delinquent taxes. The city shall nevertheless, unless a resale has been made by it, from time to time when due pay and transfer into said redemption fund the amount of any such future delinquent assessment and interest pending redemption, and no redemption shall be made until any such subsequent payments, with interest and penalties, shall also be paid. The purchaser, whether at tax collector's sale or at resale by the city in the event of the city having become the purchaser, or at foreclosure sale by order of court, shall take the property subject to all unpaid installments, interest and penalties under the same proceeding and to all public improvement assessments which may have priority thereover. (As amended Statutes 1923, p. 304.)

1915 BOND ACT CONSTITUTIONAL. The provision of the "Improvement Bond Act of 1915" which requires that a municipality in the absence of any other purchasers must purchase all the property offered at delinquent sales, is not a violation of Section 18 of Article XI of the Constitution, which prohibits a

municipality from incurring a liability without a two-thirds vote of the electorate.

The provisions of the Constitution limiting the incurring of liabilities by municipalities only refers to acts or contracts, and not to liabilities which the law places upon them.

Federal Construction Co. v. Wold, 30 Cal. App. 360.

Interest on assessments.

Sec. 13. (a) Interest on all unpaid assessments shall begin to run from the date of filing of the contractor's statement, or as otherwise provided in said street work act and shall be computed at the same rate specified in the bonds secured by such assessments. Such interest shall be payable annually or semiannually as above provided, according as such general municipal taxes on real property in such city are payable annually or semiannually, but shall for each year be computed and collected up to the next second day of July succeeding, no deduction being made by reason of any installment of such assessment being due or paid prior thereto in such year.

(b) Wherever it shall appear to the council that, according to the dates when taxes are collected in any city, there will be an insufficient amount on hand to pay the interest when due, according to the method of collection provided by the preceding provisions of this act, then said council may direct that such interest or some portion of same be collected in the year preceding that in which the same would otherwise be collected under this act, and thereupon such interest or portion thereof shall be extended on the rolls for such preceding year and be due and collected therein. (As amended Statutes 1923, p. 305.)

Entered on assessment roll.

Sec. 14. (a) A copy of the order of the council determining the assessments remaining unpaid and upon the security of which bonds are issued shall be filed in the office of the auditor. The auditor shall keep a record in his office showing the several installments of principal and interest on said assessments which are to be collected in each year during the term of said bonds. The auditor shall annually enter in his assessment roll on which taxes will next become due, opposite each lot or parcel of land affected in a space marked "public improvement assessment," or by other suitable designation, the several installments of such assessment coming due during the fiscal year

covered by such assessment roll, including in each case the interest due on such total unpaid assessments as herein provided, and also including a percentage of one-fourth of one per cent of the amount of such installments and of such interest so entered. Such percentages when collected shall belong to the city or county and shall cover the expenses and compensation of the city or county treasurer incurred in the collection of such assessments, and of the interest and penalties thereon. No other percentage shall be claimed for any such collections. In the event that such collections are made by the county officials the county auditor shall at the close of the tax collecting season promptly render to the city auditor a detailed report showing the amounts of such installments, interest, penalties and percentages so collected on each proceeding and from what property collected, and also giving a statement of the percentages retained for the expenses of making such collections. Taxpayers shall have the like right to pay such assessment as so entered with interest, and any penalties thereon, under protest as they have to pay general municipal taxes under protest, but in making such payment under protest must accompany the payment with their written protest. In the event of the lot or parcel of land affected by any assessment not being separately assessed on said roll so that the installment to be collected can be conveniently entered thereon, then said auditor shall enter on said roll a description of the lot or parcel affected, with the name of the owners if known, but otherwise described as "unknown owners," and extend the proper installment opposite same.

(b) In the event of a subdivision of the lot or parcel affected into separate holdings, the owners of same may in writing request the auditor to separate the installments according to some fixed proportions to be stated by them and to enter same in said roll opposite their respective holdings in accordance therewith. Such owners shall in connection therewith in writing waive objections to the proceeding and to the method of collecting assessments proposed by them and agree to pay future installments in accordance therewith. Thereafter the auditor shall enter such installments opposite the respective lots or parcels of land in the proportions agreed upon; *provided, however*, such division of the installments shall not be so disproportioned to the relative values of the separate holdings of land as to jeopardize the security of the assessments. (As amended Statutes 1923, p. 306.)

Assessments may be released.

Sec. 15. Any interested owner may release and pay any such unpaid assessment by depositing with the city treasurer the total unpaid balance of any such assessment together with the total interest which would become due on such assessment were it paid in the regular way; *provided*, that if the amount of same be sufficient to provide surplus moneys with which to redeem any bond outstanding and not due the next second day of July, then such person so releasing such assessment may direct the treasurer to redeem such bond, and the treasurer shall then give the proper notice for redeeming such bond, by advancing its maturity as hereinbefore provided upon which redemption the person releasing such assessment shall be entitled to credit and reimbursement for the par value of any coupons thereon which shall be

cancelled but not paid less any accrued interest paid thereon and less the premium paid on said bond as hereinbefore provided, and less any costs incurred for publishing or serving any notice of redemption. (As amended Statutes 1923, p. 307.)

Special tax to protect city.

Sec. 16. (a) The city council may, and in the event of demand by the tax collector therefor as provided in section twelve hereof must, at the time of fixing the annual tax rate and levying the taxes to be collected for general municipal purposes, levy a special tax upon the taxable property in the city for the purpose of paying for the lands purchased or to be purchased at such tax sales, but not to exceed for each local improvement ten cents on each one hundred dollars of assessable property. Such special tax shall be in addition to all other taxes levied for municipal purposes, and shall be computed, entered and collected in the same manner, and by the same persons and at the same time and with the same penalties and interest as are other municipal taxes of said city.

(b) In the event of a deficiency remaining in the redemption fund after one year from the issuance of said bonds, the council may require all persons interested to be and appear before it at a day, hour and place fixed by it for hearing and to show cause why a supplemental assessment should not be made to pay for the cost and incidental expenses of the original work done upon which the original assessments were made upon which said bonds were issued. Notice thereof shall be given by publication twice in a newspaper published in said city, and shall also be posted in the same manner as provided in the street work act for the posting of notices of the passage of the resolution of intention, by the street superintendent, the first publication of which notice and which posting shall be completed ten days before the time fixed for said hearing. At the time set for such hearing the city council shall proceed to hear any person appearing and may determine whether or not such deficiency was due to the fact that the original assessment for such cost and incidental expenses was not apportioned equitably nor in accordance with benefits. Such hearing may be postponed from time to time. If it shall appear to said council that the amount apportioned to any lot or lots was less than the amount which such lot or lots should equitably bear according to the benefit received by same, from the improvement, the council may levy a supplemental assessment apportioning to such lot or lots the additional sums which the same should equitably bear according to such benefits. The cost of such publication and posting and of making such supplemental assessment may be included therein. A copy of the order levying such supplemental assessment shall be recorded in the office of the street superintendent and from and after such recording, the sum therein levied on any lot, shall be and constitute a lien thereon and thereafter bear interest at the rate specified in said bonds. The several amounts therein levied shall be extended on the next succeeding tax rolls to be delivered to the tax collector and shall be collected in the manner herein provided for the collection of installments of the original assessments; provided, that the council may provide in its order that such supplemental

assessments may be in like manner collected in annual installments during the remaining term of years during which said bonds shall run, an equal proportion of principal coming due in each of said remaining years, in which event, however, any property owner may pay the whole of said supplemental assessment subsequent to the order of said council and before the amount has been extended on any roll whereupon interest shall cease on such assessment. Any moneys collected on said supplemental assessment shall be paid into the redemption fund and be applied to the payment of the costs of such publication and posting and of making said assessment and then to the payment of said bonds and interest thereon. After satisfaction of said bonds, repayment of all funds collected on such supplemental assessment shall be made to those paying same, if possible, first, out of recoveries had through collection of the delinquent installments of the assessments upon which said bonds were originally issued and of the interest and penalties thereon, and then out of any surplus remaining in the redemption fund after repayment to the city of special taxes and costs as provided by the preceding section. .

(c) In the event of a surplus remaining in said redemption fund after payment of all said bonds and the interest thereon, the same shall, subject to the provisions of the preceding subdivision of this section, first be applied to repayment to said city of any special taxes so levied less its recovery on the lands purchased at delinquent sale, and also of any costs incurred by it hereunder, and then be proportionately credited upon the final installments due upon said assessments securing said bonds and repaid to those paying same if previously paid. (As amended Statutes 1921, p. 230.)

Effect of certificate of sale and deed.

Sec. 17. (a) In the event of sale by the tax collector of any lot or parcel of land for nonpayment of taxes and of any installment of the assessment thereon, or of the penalties, interest or costs on same, or for nonpayment of any installment, penalties, interest or costs, then any certificate of such sale and deed issued pursuant thereto, is primary evidence of the regularity of all proceedings theretofore had, and shall be conclusive evidence of all things of which bonds issued upon the security thereof are conclusive evidence, and prima facie evidence of the regularity of all proceedings subsequent to the issuance of the bonds, and such deed conveys to the grantee the absolute title to the lands described therein, free of all incumbrances, except the lien for other states, county and municipal taxes and unpaid installments, interest and penalties under the same proceeding and except all public improvement assessments which may have priority thereover.

(b) Upon application by the city council or of any holder or interested party, the superintendent of banks shall examine into the regularity of the issuance of said bonds and relative to the sufficiency of the security provided for the payment thereof and if satisfied therewith may certify the same as suitable for investment by savings banks and trustees whereupon the same may be so used for investment of savings deposits and trust funds. The cost of any required appraisalment may on approval of the city council be paid out

of any surplus moneys in the redemption fund not required for the payment of the interest or principal of said bonds. (As amended Statutes 1923, p. 307.)

Definitions.

Sec. 18. The term "city auditor" as used in this act shall be held to mean and include any person who, under whatever name or title, is charged with the duty of extending taxes upon the assessment rolls and lists. The term "tax collector" as used in this act shall be held to mean and include any person who, under whatever name or title, is charged with the duty of collecting taxes, advertising delinquent lists of unpaid taxes, selling lands thereunder and executing certificates of sale and deeds thereon. Wherever in this act the name of any municipal body or other officer is used, or any word or phrase is used which is not herein expressly defined, it means and shall be taken to mean such municipal body or officer, or word or phrase as the same respectively is expressly defined in said street work act.

Directory provisions.

Sec. 19. The provisions of this act relative to the performance of official duty as to any time or place relative to the form of any resolution, notice, order, list, certificate of sale, deed or other instrument, shall be deemed directory. No bond, coupon, assessment or installment thereof or of the interest or penalties thereon, or certificate of sale or deed shall be held invalid for error in the computation of the proper amount due on same, provided, the error be found to be comparatively negligible, or be found to be one in favor of the owner of the real property affected thereby. If no newspaper be published in the city any notices called for under this act may in lieu of publication, be given by posting in three public places in said city for at least ten days, and with like effect as if published, the first posting being had at least as many days prior to the date noticed as required for the first publication. (As amended Statutes 1921, p. 232.)

Effect of act.

Sec. 20. This act shall in no wise affect an act entitled "An act to provide a system of street improvement bonds to represent certain assessments for the cost of street work and improvement within municipalities, and also for payment of said bonds," approved February 27, 1893, nor part III of the "improvement act of 1911" hereinbefore referred to, nor any similar acts on the same subject, or apply to proceedings had thereunder, but is intended to and does provide an alternate system for the issuance of bonds to represent and be secured by the assessments mentioned in this act; and it shall be in the discretion of the legislative body of any city to proceed under the provisions of this act or of such other acts; but when any proceedings for the issuance of bonds are commenced under this act, as amended from time to time, the provisions of this act, and of such amendments

thereof as may be hereafter adopted, and no other, shall apply to all such proceedings, and any provisions contained in said acts or any acts in conflict herewith shall be void and of no effect as to such proceedings commenced under this act. This act may be designated and referred to as the "improvement bond act of 1915."

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VROOMAN STREET ACT

An act to provide for work upon streets, lanes, alleys, courts, places, and sidewalks, and for the construction of sewers within municipalities.

[Approved March 18, 1885. Statutes 1885, p. 147.]

(Amended 1887, p. 148; 1889, p. 157; 1891, pp. 116, 196, 461; 1893, pp. 33, 89, 172; 1899, p. 23; 1903, p. 88; 1905, pp. 15, 63; 1907, pp. 126, 1000; 1909, pp. 31, 399, 1017; 1911, pp. 626, 849; 1913, pp. 353, 402; 1915, p. 1400; 1919, p. 481; 1921, pp. 224, 300, 551, 563; 1923, p. 110; 1925, Chap. 268.)

PART I.

Public streets defined.

Sec. 1. All streets, lanes, alleys, places, or courts, in the municipalities in this state now open or dedicated, or which may hereafter be opened or dedicated to public use, shall be deemed and held to be open public streets, lanes, alleys, places, or courts, for the purposes of this act, and the city council of each municipality is hereby empowered to establish and change the grades of said streets, lanes, alleys, places, or courts, and fix the width thereof, and is hereby invested with jurisdiction to order to be done thereon any of the work mentioned in section 2 of this act, under the proceedings hereinafter described.

Cities may order streets improved.

Sec. 2. Whenever the public interest or convenience may require, the city council is hereby authorized and empowered to order the whole or any portion, either in length or width, of any one or more of the streets, avenues, lanes, alleys, courts, places, boulevards, highways, crossings, intersections or public ways of any such city graded or regraded to the official grade, planked or replanked, paved or repaved, macadamized or remacadamized, graveled or regraveled, piled or repiled, capped or recapped, oiled or reoiled, and to order the construction or reconstruction therein of sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings and parkways, sewers, ditches, drains, conduits and channels for sanitary and drainage purposes or either or both thereof, with outlets, cesspools, manholes, catch basins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels and other appurtenances, pipes, hydrants and appliances for fire protection, or the distribution of a municipal water supply, tunnels, viaducts, conduits and subways, breakwaters, levees, bulkheads and walls of rock or other material to protect the same from overflow or injury by water, and poles, posts, wires, pipes, conduits, lamps and other suitable or necessary appliances for the purpose of lighting the same, the planting of trees thereon, and the construction or reconstruction in, over or through property or rights of way owned by such city, of tunnels, sew-

ers, ditches, drains, conduits and channels for sanitary and drainage purposes or either or both thereof, with necessary outlets, cesspools, manholes, catch basins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels and other appurtenances, pipes, hydrants and appliances for fire protection and break waters, levees, bulkheads and walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places, public ways and other property in any such city, from overflow by water, and poles, posts, wires, pipes, conduits, lamps and other suitable or necessary appliances for the purpose of lighting the streets, avenues, lanes, alleys, courts, public ways and other property in any such city, and to order any work to be done which shall be deemed necessary to improve the whole or any portion of such streets, avenues, sidewalks, lanes, alleys, courts, places or public ways or property or rights of way of such city, including the acquisition, construction, reconstruction, extension, maintenance or repair of any public utility owned or proposed to be acquired by any municipal corporation, or the pipes, wires, conduits and other appliances and appurtenances for the operation thereof; provided, that such acquisition of any public utility already installed, and any of the appliances and appurtenances thereof shall not be included in the same proceeding with any of the other improvements mentioned in this section. [As amended, Statutes 1915, p. 1400.]

Resolution of intention. Publications and notices posted. Objections, etc.

Sec. 3. Before ordering any work done or improvement made, which is authorized by section 2 of this act, the city council shall pass a resolution of intention so to do, and describing the work, which shall be posted conspicuously for two days on or near the chamber door of said council, and published by two insertions in one or more daily, semi-weekly or weekly newspapers published and circulated in said city and designated by said council for that purpose. Whenever the construction of culverts, bridges, gutters, curbs, steps, parkings and parkways, sewers, ditches, drains, conduits and channels for sanitary and drainage purposes, or either or both thereof, together with appurtenances, pipes, wires, conduits and other appliances and appurtenances, constitutes the work or improvement or any portion thereof mentioned in the resolution of intention, such resolution of intention shall be sufficient if it mentions the fact that the construction of said improvements, or such of them as it be desired to have done in the work or improvement, is embraced in the said work or improvement, briefly describes the same and refers to plans and specifications on file with the city engineer or city clerk for particulars. The street superintendent shall, after the passage of the resolution of intention, cause to be conspicuously posted along all streets and parts of streets or other public places and rights of way where any work is to be done or improvement made at not more than three hundred (300) feet apart but not less than three in all, or

when the work to be done is only upon an entire crossing or any part thereof, in front of each quarter block and irregular block liable to be assessed, notices of the passage of said resolution. Said notices shall be headed "notice of street work," in letters of not less than one inch in length, and shall, in legible characters, state the fact of the passage of the resolution, its date and briefly describe the work or improvement proposed, and refer to the resolution for further particulars. He shall also cause a notice similar in substance, to be published by two insertions in one or more daily newspapers published and circulated in said city, and designated by said city council, or in cities where there is no daily newspaper by one insertion in a semi-weekly or weekly newspaper so published, circulated and designated. In case there is no such paper published in said city, said notice shall be posted for six days on or near the chamber door of said council, and in two other conspicuous places in said city, as hereinafter provided. The city clerk shall immediately upon the passage of said resolution of intention mail, postage prepaid, to each property owner whose property is to be assessed, to pay the costs and expenses of said improvement at his last known address as the same appears upon the tax rolls of said city, or when no address so appears, to the general delivery, a postal card containing a notice which shall be in the following, or substantially the following form (filling blanks): "You are hereby notified that on the..... day of....., 19....., the council of the city of....., California, by virtue of an act commonly known as 'the Vrooman act,' passed a resolution of intention providing for the improvement ofstreet between.....street and.....street. You are hereby referred to the said resolution for further particulars. Property belonging to you is to be assessed for this improvement.

.....City Clerk."

If any lots or parcels of land in the assessment district be assessed to "unknown owners" on the tax rolls of said city, no postal cards containing such notice need be mailed to the owners thereof. The city clerk shall, upon the completion of the mailing of said postal cards, file in the office of the superintendent of streets an affidavit setting forth the time and manner of the compliance with this requirement; provided, that the failure of the city clerk to mail said cards, or the failure of the property owners to receive the same, or the failure of the superintendent of streets to post the notices of street work, shall in no wise affect the validity of the proceedings or prevent the city council from acquiring jurisdiction to order the work; provided, however, that the city council may require affidavits to be filed showing the posting and mailing of notices before it adopts the resolution ordering the work. The owners of a majority of the frontage of the property fronting on said proposed work or improvement where the same is for one block or more, may make a written objection to the same within ten days

after the expiration of the time of the publication and posting of said notice, which objection shall be delivered to the clerk of the city council who shall indorse thereon the date of its reception by him, and such objections so delivered and indorsed shall be a bar for six months to any further proceedings in relation to the doing of said work or making said improvements, unless the owners of one-half or more of the frontage, as aforesaid, shall meanwhile petition for the same to be done. At any time before the issuance of the assessment roll, all owners of lots or lands liable to assessment therein, who, after the first publication of said resolution of intention, may feel aggrieved, or who may have objections to any of the subsequent proceedings of said council in relation to the performance of the work mentioned in said notice of intention, shall file with the clerk a petition of remonstrance, wherein they shall state in what respect they feel aggrieved, or the proceedings to which they object; such petition or remonstrance shall be passed upon by the said city council, and its decision therein shall be final and conclusive. But when the work or improvement proposed to be done is the construction of sewers, manholes, culverts, or cesspools, crosswalks, or sidewalks, curbs and gutters, and the objection thereto is signed by the owners of a majority of the frontage liable to be assessed for the expense of said work, as aforesaid, the city council shall, at its next meeting, fix a time for hearing said objections, not less than one week thereafter. The city clerk shall thereupon notify the persons making such objections, by depositing a notice thereof in the postoffice of said city, postage prepaid, addressed to each objector, or his agent, when he appears for such objector. At the time specified said city council shall hear the objections urged, and pass upon the same, and its decision shall be final and conclusive, and the said bar for six months to any further proceedings shall not be applicable thereto. And when not more than two blocks, including street crossings, remain ungraded to the official grade, or otherwise unimproved, in whole or in part, and a block or more on each side upon said street has been so graded or otherwise improved, or when not more than two blocks at the end of a street remain so ungraded or otherwise unimproved, said city council may order any of the work mentioned in this act to be done upon said intervening ungraded or unimproved part of said street, or at the end of a street, and said work upon said intervening part, or at the end of a street, shall not be stayed or prevented by any written or other objection unless such council shall deem proper. And if one-half or more in width or in length, or as to grading, one-half or more of the grading work of any street lying and being between two successive main street crossings, or if a crossing has been already partially graded or improved as aforesaid, said council may order the remainder improved, graded or otherwise notwithstanding such objections of property owners. At the expiration of twenty days after the expiration of the time of said publication by said street superintendent, and at the expiration of twenty-five days after the advertising and posting, as aforesaid, of any resolution of intention, if no written objection to the work therein described has been

delivered, as aforesaid, by the owners of a major frontage of the property fronting on said proposed work or improvement, or if any written objection purporting to be signed by the owners of a major frontage is disallowed by said council, as not of itself barring said work for six months, because in its judgment, said objection has not been legally signed by the owners of a majority of said frontage, the city council shall be deemed to have acquired jurisdiction to order any of the work to be done, or improvement to be made, which is authorized by this act; which order, when made, shall be published for two days, the same as provided for the publication of the resolution of intention. Before passing any resolution for the construction of said improvements, plans and specifications and careful estimates of the costs and expenses thereof shall be furnished to said city council, if required by it, by the city engineer of said city; and for the work of constructing sewers, specifications shall always be furnished by him. Whenever the contemplated work or improvement in the opinion of the city council, is of more than local or ordinary public benefit, or whenever, according to estimates to be furnished by the city engineer, the total estimated costs and expenses thereof would exceed one-half the total assessed value of the lots and lands assessed, if assessed upon the lots or land fronting upon said proposed work or improvement, according to the valuation fixed by the last assessment roll whereon it was assessed for taxes for municipal purposes, and allowing a reasonable depth from such frontage for lots or lands assessed in bulk, the city council may make the expense of such work or improvement chargeable upon a district, which said city council shall, in its resolution of intention, declare to be assessed to pay the costs and expenses thereof. Said resolution of intention shall in general terms describe the said district and refer to a plat or map approved by the city council, which shall indicate by a boundary line the extent of the territory to be included in said assessment district, which plat or map shall be on file in the office of the city engineer before said superintendent of streets shall proceed with the publication and posting of the notices of street work, and shall govern for all details as to the extent of the said assessment district. Objections to the extent of the district of lands to be affected or benefited by said work or improvement, and to be assessed to pay the cost and expenses thereof, may be made by interested parties, in writing, within ten days after the expiration of the time of the publication of the notice of the passage of the resolution of intention. The city clerk shall lay such objections before the city council, which shall, at its next meeting, fix a time for hearing said objections not less than one week thereafter. The city clerk shall thereupon notify the persons making such objections by depositing a notice thereof in the postoffice of said city, postage prepaid, addressed to each objector. At the time specified the city council shall hear the objections urged, and pass upon the same, and its decision shall be final and conclusive. If the objections are sustained, all proceedings shall be stopped; but proceedings may be immediately again commenced by giving the notice of intention to do the said work or

make said improvements. If the objections are overruled by the city council, the proceedings shall continue the same as if such objections had not been made. [As amended, Statutes 1913, p. 403.]

Alternative plans and specifications. Procedure.

Sec. 3½. When the work proposed to be done is the construction or reconstruction of sewers for sanitary or drainage purposes, or either or both thereof, the council shall have power in the resolution of intention to declare its intention to do such work according to some one of two or more plans or methods or with some one of two or more kinds of material or mixtures and to adopt plans and specifications for the doing of such work according to such alternative plans or methods or with such alternative kinds of material or mixtures. In the event the council shall so declare in its resolution of intention, then the council shall upon the hearing provided for in section three hereof, determine that such work shall be so done, and invite proposals for the doing thereof according to such alternative method or plan or with such alternative kinds of materials or mixtures, and upon the opening of such proposals said council shall thereupon fix a time for hearing upon the proposals so received, notice of which shall be given by posting and publication for the same time and in the same manner as is provided for the notice inviting proposals, the first publication of which notice shall be at least ten days before the time of hearing so fixed. At such hearing any person interested shall have the right to appear and be heard upon the question as to which method or plan or material or mixture shall be adopted for the doing of such work and as to which proposal shall be accepted. The council may thereupon in its award of the contract determine not only the bidder to whom the award shall be made, but also which one of such alternative methods or plans of doing such work shall be adopted, or which of such alternative materials or mixtures shall be adopted, for the doing of said work. It shall thereupon award the contract, if an award be made, to the lowest responsible bidder for the doing of said work according to such plan or method or material or mixture so adopted, and thereupon said work shall be done in accordance with the plan or method or material or mixture so adopted. No other method or procedure provided for in this act shall govern in regard to the doing of said work. The procedure provided for in this section shall be an alternative procedure to that provided in the other sections of this act, of which this section forms a part, and the council shall be at liberty to use such procedure or not in its discretion. If the council shall not exercise its discretion to call for proposals for the doing of said work according to the alternative method as herein provided for, or plan, or such alternative materials or mixtures, then this section shall not apply to any proceeding taken under this act. It is provided, further, that, notwithstanding any charter or other provision of law requiring the award of contract to be made by a public board or officer, other than the council, nevertheless, in all cases where proceedings have been taken under this section the award of contract shall be by the council and said council shall not only determine the bidder to whom the award shall be made, but also the method or plan or materials or mixtures to be adopted for the doing of such work. (Added, Statutes 1925, Chap. 268.)

Council may order work done after majority of frontage petitions.

Sec. 4. The owners of a majority in frontage of lots and lands fronting on any street, avenue, lane, alley, place, or court, or of lots or lands liable to be assessed for the expense of the work petitioned to be done, or their duly authorized agents, may petition the city council to order any of the work mentioned in this act to be done, and the city council may order the work mentioned in said petition to be done, after notice of its intention so to do has been posted and published as provided in section 3 of this act. [As amended, Statutes 1891, p. 199.]

Procedure preliminary to letting contracts. Award of contract, etc.

Sec. 5. Before the awarding of any contract by the city council for doing any work authorized by this act, the city council shall cause notice, with specifications, to be posted conspicuously for five days on or near the council chamber door of said council, inviting sealed proposals or bids for doing the work ordered, and shall also cause notice of said work inviting said proposal, and referring to the specifications posted or on file, to be published for two days in a daily, semi-weekly, or weekly newspaper, published and circulated in said city, designated by the council for that purpose, and in case there is no newspaper published in said city, then it shall only be posted as hereinbefore provided. All proposals or bids offered shall be accompanied by a check payable to the order of the mayor of the city, certified by a responsible bank, for an amount which shall not be less than ten per cent of the aggregate of the proposal, or by a bond for the said amount and so payable, signed by the bidder and by two sureties, who shall justify, before any officer competent to administer an oath, in double the said amount, and over and above all statutory exemptions. Said proposals or bids shall be delivered to the clerk of the said city council, and said council shall, in open session, examine and publicly declare the same; provided, however, that no proposal or bid shall be considered unless accompanied by said check or bond satisfactory to the council. The city council may reject any and all proposals or bids should it deem this for the public good, and also the bid of any party who has been delinquent and unfaithful in any former contract with the municipality, and shall reject all proposals or bids other than the lowest regular proposal or bid of any responsible bidder, and may award the contract for said work or improvement to the lowest responsible bidder at the prices named in his bid, which award shall be approved by the mayor or a three-fourths vote of the city council. If not approved by him, or a three-fourths vote of the city council, without further proceedings, the city council may readvertise for proposals or bids for the performance of the work as in the first instance, and thereafter proceed in the manner in this section provided, and shall thereupon return to the proper parties the respective checks and bonds corresponding to the bids so rejected. But the checks accompanying such accepted proposals or bids shall be held by the city clerk of said city until the contract for doing said work, as hereinafter

provided, has been entered into, either by said lowest bidder or by the owners of three-fourths part of the frontage, whereupon said certified check shall be returned to said bidder. But if said bidder fails, neglects or refuses to enter into the contract to perform said work or improvement, as hereinafter provided, then the certified check accompanying his bid and the amount therein mentioned, shall be declared to be forfeited to said city, and shall be collected by it and paid into its fund for repairs of streets; any bond forfeited may be prosecuted, and the amount due thereon collected and paid into said fund. Notice of such awards of contracts shall be posted for five days, in the same manner as hereinbefore provided for the posting of proposals for said work. It shall be published for two days in a daily newspaper published and circulated in said city and designated by said city council, or in cities where there is no daily newspaper, by one insertion in a semi-weekly or weekly newspaper so published, circulated and designated; provided, however, that in case there is no newspaper printed or published in any such city, then such notice of award shall only be kept posted as hereinbefore provided. The owners of three-fourths of the frontage of lots and lands upon the street whereon said work is to be done, or their agents, and who shall make oath that they are such owners or agents, shall not be required to present sealed proposals or bids, but may, within ten days after the first posting and publication of said notice of said award, elect to take said work and enter into a written contract to do the whole work at the price at which the same has been awarded. Should the said owners fail to elect to take said work, and to enter into a written contract therefor within ten days, or to commence the work within fifteen days after the first posting and publication of said award, and to prosecute the same with diligence to completion, it shall be the duty of the superintendent of streets to enter into a contract with the original bidder to whom the contract was awarded, and at the prices specified in his bid. But if such original bidder neglects, fails or refuses, for fifteen days after the first posting and publication of notice of award, to enter into the contract, then the city council, without further proceedings, shall again advertise for proposals or bids as in the first instance, and award the contract of said work to the then lowest regular bidder. The bids of all persons and the election of all owners, as aforesaid, who have failed to enter into the contract as herein provided, shall be rejected in any bidding or election subsequent to the first for the same work. If, however, the owner or contractor, who may have taken any contract, do not complete the same within the time limited in the contract, or within such further time as the city council may give them, the superintendent of streets shall report such delinquency to the city council, which may relet the unfinished portion of said work, after pursuing the formalities prescribed hereinbefore for the letting of the whole in the first instance. All contractors, contracting owners included, shall, at the time of executing any contract for street work, execute a bond to the satisfaction and approval of the superintendent of streets of said city, with two or more sureties and payable to such city, in such

sums as the mayor shall deem adequate, conditioned for the faithful performance of the contract; and the sureties shall justify before any person competent to administer an oath, in double the amount mentioned in said bond, over and above all statutory exemptions. Before being entitled to a contract, the bidder to whom the award was made, or the owners who have elected to take the contract, must advance to the superintendent of streets, for payment by him, the cost of publication of notices, resolutions, orders, or other incidental expenses and matters required under the proceedings prescribed in this act, and such other notices as may be deemed requisite by the city council; provided, however, that all contracts entered into between the owners of any property and the contractor or his agents to perform the work of improvement on any street, alley, lane, avenue, place, or court, shall be in triplicate and shall contain all items of expense and the total contract price therefor, and no other payment shall be allowed to or recovered by such contractor, other than as itemized and set forth in said contract. The original of such contract shall be held by the city, one copy thereof shall be held by the contractor or his agent, and one copy thereof duplicate shall be held by the owners. And in case the work is abandoned by the city before the letting of the contract, the incidental expenses incurred previous to such abandonment shall be paid out of the city treasury. [As amended, Statutes 1911, p. 849.]

Notice of faulty proceedings. Objections, when deemed to be waived.

Sec. 5½. At any time within ten days from the date of the first publication of the notice of award of contract, any owner of or other person having any interest in any lot or land liable to assessment, who claims that any of the previous acts or proceedings relating to said improvement are irregular, defective, erroneous or faulty, may file with the clerk of the city council a written notice specifying in what respect said acts and proceedings are irregular, defective, erroneous or faulty. Said notice shall state that it is made in pursuance of this section. All objections to any act or proceeding, prior to the date of the aforesaid notice of award, in relation to said improvement, not made in writing and in the manner and at the time aforesaid, shall be waived, excepting as to matters directly affecting the jurisdiction of the council to order the said work or improvement. [New section, Statutes 1909, p. 31.]

Superintendent of streets, power and duties. Work and materials, assessment and expense.

Sec. 6. The superintendent of streets is hereby authorized, in his official capacity, to make all written contracts, and receive all bonds authorized by this act, and to do any other act, either express or implied, that pertains to the street department under this act, and he shall fix the time for the commencement, which shall not be more than fifteen days from the date of the contract, and for the completion of the work under all contracts entered into by him, which work shall be prosecuted with diligence from day to day thereafter to completion, and he may extend the time so fixed from time to time under the direction of the

city council. The work provided for in section 2 of this act must, in all cases, be done under the direction and to the satisfaction of the superintendent of streets, and the materials used shall comply with the specifications and be to the satisfaction of said superintendent of streets, and all contracts made therefor must contain a provision to that effect, and also express notice that in no case, except where it is otherwise provided in this act, will the city, or any officer thereof, be liable for any portion of the expense, nor for any delinquency of persons or property assessed. The city council may, by ordinance, prescribe general rules directing the superintendent of streets and the contractor as to the materials to be used, and the mode of executing the work under all contracts thereafter made. The assessment and apportionment of the expenses of all such work or improvement shall be made by the superintendent of streets in the same mode herein provided.

Securing claim for labor, etc., for street and sewer work. Filing of claim and action on.

Sec. 6½. Every contractor, person, company or corporation including contracting owners, to whom is awarded any contract for street work under this act, shall, before executing the said contract, file with the superintendent of streets a good and sufficient bond, approved by the mayor, in a sum not less than one-half of the total amount payable by the terms of said contract; such bond shall be executed by the principal and at least two sureties, who shall qualify for double the sum specified in said bond, and shall be made to inure to the benefit of any and all persons, companies, or corporations who perform labor on, or furnish materials to be used in the said work of improvement, and shall provide that if the contractor, person, company, or corporation to whom said contract was awarded fails to pay for any materials so furnished for the said work of improvement, or for any work or labor done thereon of any kind, that the sureties will pay the same, to an amount not exceeding the sum specified in said bond. Any laborer, materialman, person, company, or corporation, furnishing materials to be used in the performance of said work specified in said contract, or who performed work or labor upon the said improvement, whose claim has not been paid by the said contractor, company or corporation, who executed the said contract, shall severally have a first lien upon and against the assessment, any partial assessment, any reassessment, and any bonds which may be issued to represent any assessment or reassessment. Such laborers, or materialmen may, at any time prior to thirty days after the recording of the assessment for said work, file with the superintendent of streets a verified statement of his or its claim, together with a statement that the same, or some part thereof, has not been paid. At any time within ninety days after the filing of such claim the person, company, or corporation filing the same or their assigns, may commence an action either to enforce the aforesaid lien, or on said bond, for the recovery of the amount due on said claim, together with the costs in-

curred in said action, and a reasonable attorney fee, to be fixed by the court, for the prosecution thereof. [As amended, Statutes 1919, p. 481.]

Method of assessment. Expenses of work.

Sec. 7. Subdivision One.—The expenses incurred for any work authorized by this act (which expense shall not include the cost of any work done in such portion of any street as is required by law to be kept in order or repair by any person or company having railroad tracks thereon, nor include work which shall have been declared in the resolution of intention to be assessed on a district benefited) shall be assessed upon the lots and lands fronting thereon, except as herein specifically provided; each lot or portion of a lot being separately assessed, in proportion to the frontage, at a rate per front foot sufficient to cover the total expense of the work.

Street crossings.

Subdivision Two.—The expense of the work done on main street crossings shall be assessed at a uniform rate per front foot of the quarter blocks and irregular blocks adjoining and cornering upon the crossings, and separately upon the whole of each lot or portion of a lot having any frontage in the said blocks fronting on said main streets, half way to the next main street crossing, and all the way on said blocks to a boundary line of the city where no such crossing intervenes, but only according to its frontage in said quarter blocks and irregular blocks.

One street terminating in another.

Subdivision Three.—Where a main street terminates in another main street, the expenses of the work done on one-half of the width of the street opposite the termination shall be assessed upon the lots in each of the two quarter blocks adjoining and cornering on the same, according to the frontage of such lots on said main streets, and the expense of the other half of the width of said street upon the lot or lots fronting on the latter half of the street at such termination.

Alley and main street crossings.

Subdivision Four.—Where any alley or subdivision street crosses a main street, the expense of all work done on said crossing shall be assessed on all lots or portions of lots half way on said alley or subdivision street to the next crossing or intersection, or to the end of such alley or subdivision street, if it does not meet another.

Alley crossings.

Subdivision Five.—The expense of work done on alley or subdivision street crossings shall be assessed upon the lots fronting upon such alley or subdivision streets on each side thereof, in all directions, half way to the next street, place or court, on either side, respectively, or to the end of such alley or subdivision street, if it does not meet another.

One alley, etc., terminating in another.

Subdivision Six.—Where a subdivision street, avenue, lane, alley, place or court terminates in another street, avenue, lane, alley, place or

court, the expense of the work done on one-half of the width of the subdivision street, avenue, lane, alley, place or court opposite the termination, shall be assessed upon the lot or lots fronting on such subdivision street, avenue, lane, alley, place or court so terminating, according to its frontage thereon, half way, on each side, respectively, to the next street, avenue, lane, alley, place or court or to the end of such street, avenue, lane, alley, place or court, if it does not meet another, and the other one-half of the width upon the lots fronting such termination.

Work on one side of street.

Subdivision Seven.—Where any work mentioned in this act (manholes, sewers, cesspools, culverts, crosswalks, piling and capping excepted) is done on one side of the center line of any street or sewerage or re sewerage is ordered to be done under the sidewalk on only one side of any street for any length thereof, the assessment for the expenses thereof shall be made only upon the lots and lands fronting nearest upon that side of the street and for intervening intersections only upon the two quarter blocks adjoining and cornering upon that side.

Property belonging to U. S., state or city front on work.

Subdivision Eight.—Whenever any lot, piece or parcel of land belonging to the United States or to the State of California, or any lot, piece or parcel of land belonging to any county, city, public agent, mandatory of the government, school board, educational, penal or reform institution or institution for the feeble-minded or the insane, and being in use in the performance of any public function, fronts upon the proposed work or improvement or is included within the district declared by the city council in the resolution of intention to be the district to be assessed to pay the costs and expenses thereof, the city council may, in its discretion, in the resolution of intention, declare that said lots, pieces or parcels of land so owned and in use, or any of them, shall be omitted from the assessment to be made to cover the cost and expenses of said work or improvement. In the event that said lots, pieces or parcels of land, or any of them, shall by said resolution be omitted from the assessment then the total expense of all work done shall be assessed on the remaining lots fronting on the work or improvement or lying within the limits of the assessment district without regard to such omitted lots, pieces or parcels of land. In the event the city council shall, in its resolution of intention, declare that the said lots, pieces or parcels of land so owned and in use, or any of them, shall be included in the assessment, or in the event that no declaration is made respecting such lots, pieces or parcels of land, then such sum or sums as thereafter may be assessed against such lots, pieces or parcels of land, so owned and used, shall be payable by the city out of the general fund, unless the council shall in its resolution of intention designate another fund and the contract for said work or improvement thereafter

made shall contain a provision to that effect; provided, however, that any such sum or sums which may be assessed against any such lots, pieces or parcels of land, so owned and used, shall not be payable by the city when such sum or sums are paid by the owner of or the governing body controlling such lots, pieces or parcels of land.

Owners may do grading.

Subdivision Nine.—It shall be lawful for the owner or owners of lots or lands fronting upon any street, the width and grade of which have been established by the city council, to perform, at his or their own expense (after obtaining permission from the council so to do, but before said council has passed its resolution of intention to order grading inclusive of this), any grading upon said street, to its full width, or to the center line thereof, and to its grade as then established, and thereupon to procure, at his or their own expense, a certificate from the city engineer, setting forth the number of cubic yards of cutting and filling made by him or them in said grading, and the proportions performed by each owner, and that the same is done to the established width and grade of said street, or to the center line thereof, and thereafter to file said certificate with the superintendent of streets, which certificate the superintendent shall record in a book kept for that purpose in his office, properly indexed. Whenever thereafter the city council orders the grading of said street, or any portion thereof, on which any grading certified as aforesaid has been done, the bids and contracts must express the price by the cubic yard for cutting and filling in grading; and the said owner or owners and his or their successors in interest, shall be entitled to credit, on the assessment upon his or their lots and lands fronting on said streets for the grading thereof, to the amount of the cubic yards of cutting and filling set forth in his or their certificate, at the prices named in the contract for said cutting and filling; or, if the grade meanwhile has been duly altered, only for so much of said certified work as would be required for grading to the altered grade; provided, however, that such owner or owners shall not be entitled to such credit as may be in excess of the assessments for grading upon the lots and lands owned by him or them, and proportionately assessed for the whole of said grading; and the superintendent of streets shall include in the assessment for the whole of said grading upon the same grade the number of cubic yards of cutting and filling set forth in any and all certificates so recorded in his office, or for the whole of said grading to the duly altered grade so much of said certified work as would be required for grading thereto, and shall enter corresponding credits, deducting the same as payments upon the amounts assessed against the lots and lands owned, respectively, by said certified owners and their successors in interest; provided, however, that he shall not so include any grading quantities or credit any sums in excess of the proportionate assessments for the whole of the grading which are made upon any lots and lands fronting upon said street and belonging to any such certified owners or their successors in interest.

Whenever any owner or owners of any lots and lands fronting on any street shall have heretofore done, or shall hereafter do any work, (except grading) on such street, in front of any block, at his or their own expense, and the city council shall have subsequently ordered any work to be done of the same class in front of the same block, said work so done at the expense of such owner or owners shall be excepted from the order ordering work to be done; provided that the work so done at the expense of such owner or owners, shall be upon the official grade, and in condition satisfactory to the street superintendent at the time said order is passed.

Diagram of district. Plan of assessment.

Subdivision Ten.—Whenever the resolution of intention declares that the cost and expenses of the work and improvement are to be assessed upon a district, the city council shall direct the city engineer to make a diagram of the property affected or benefited by the proposed work or improvement, as described in the resolution of intention, and to be assessed to pay the expenses thereof. Such diagram shall show each separate lot, piece or parcel of land, the area in square feet of each of such lots, pieces or parcels of land, and the relative location of the same to the work proposed to be done, all within the limits of the assessment district; and when said diagram shall have been approved by the city council, the clerk shall, at the time of such approval, certify the fact and date thereof. Immediately thereafter the said diagram shall be delivered to the superintendent of streets of said city, who shall, after the contractor of any street work has fulfilled his contract to the satisfaction of said superintendent of streets or city council, on appeal, proceed to estimate upon the lands, lots or portions of lots within said assessment district, as shown by said diagram, the benefits arising from such work, and to be received by each such lot, portion of such lot, piece, or subdivision of land, and shall thereupon assess upon and against said lands in said assessment district the total amount of the costs and expenses of such work, and in so doing shall assess said total sum upon the several pieces, parcels, lots, or portions of lots, and subdivisions of land in said assessment district benefited thereby, to wit: Upon each respectively, in proportion to the estimated benefits to be received by each of said several lots, portions of lots, or subdivisions of land. In other respects the assessment shall be as provided in the next section.

Railroad subject to assessment.

Subdivision Eleven.—The terms lot, lots, lands, piece or parcel of land wherever mentioned in this act shall be deemed to include and shall include property owned or controlled by any person, firm or corporation as a railroad, street or interurban railroad, right of way, and whenever a railroad, street or interurban railroad right of way shall front or abut on any street improved under the provisions of this act or shall be included within any district to be assessed for the cost of

any improvement provided in this act, such railroad right of way (whether the same is owned in fee or as an easement) shall be included in the warrant, assessments, and diagram and shall be assessed in the same manner and with the same effect as other lots, lands or pieces or parcels of land are assessed as provided in this act and such railroad right of way shall be subject to sale for non-payment of assessments as in this act provided.

Railroads to improve streets between tracks.

Subdivision Twelve.—Whenever any railroad track or tracks of any description exist upon the street or streets upon which the city council of any city has ordered an improvement to be made, and has excepted therefrom the portions used by the track, between the rails and for two feet on each side thereof, and between the tracks if there be more than one, the said order, unless said city council shall by resolution theretofore passed have declared the contrary, shall be deemed to be and constitute a requirement that the person or company having said railroad track or tracks thereon shall improve the said portion with improvements similar in all respects to, with the same materials, under the same specifications and superintendence, and to the like satisfaction as those ordered to be performed by said order ordering the work, and the resolution of intention and notice of proposed improvement shall be construed and are hereby declared to be notice to said person or company of the intention to order the same. Thereupon it shall be the duty of said person or company having such track or tracks on such street or streets to notify in writing the superintendent of streets if such person or company elects to perform such work at its own charge and expense and under its own direction; said notice must be delivered to the superintendent of streets within ten days after the first publication of notice or award of contract. The omission or neglect to make such election shall be construed as constituting the superintendent of streets the agent of the owner of said track or tracks, with authority to enter into a contract made in accordance with the provisions of this section for making the said improvements. Said superintendent of streets shall advertise for bids for the improvement of said portions of street or streets lying between the rails and for two feet on each side thereof, and between the tracks, if there be more than one. It shall be the duty of said city council to award the contract for the making of said improvements to the lowest regular responsible bidder. Such bidding and awarding of contracts shall be made in the same manner hereinbefore provided for the awarding of contracts for improvements, excepting that no notice of award shall be published. Immediately upon the award, the superintendent of streets shall enter into a contract with the person to whom said contract was awarded for the making of said improvement or improvements upon the portions of the street or streets described in said notice inviting bids, and at the price stated in said bid. The contractor shall execute bonds in the manner required for the execution of contracts for improvements. Upon

the completion of the work and its acceptance, the street superintendent shall make a certificate of such completion together with a statement of the amount due under the terms of said contract for the performance of said work. Such certificate shall be countersigned by the mayor of said city, and shall be recorded in the office of said superintendent of streets. The contractor shall thereupon be entitled to payment of the full amount of said contract price, and the recording of such certificate shall be sufficient notice to the owner of such track or tracks that said contract price is due and payable. In the event that such amount is not paid within thirty days from the date of the recording of said certificate, the contractor may file a sworn statement to that effect with the superintendent of streets, who shall record the same in his office in the book in which the certificate of acceptance has been recorded. Said contractor shall thereupon have a cause of action against said person or company owning said track or tracks for the amount of said contract, together with a reasonable attorney's fee, and shall also have as security for the recovery of such amount, a first lien upon the track and franchises of said person or company, between whose rails or tracks the said work has been performed, contained within the corporate limits of said city. In such suit, the certificate of the superintendent of streets, hereinbefore mentioned, shall be and constitute prima facie evidence of the regularity of all proceedings, and of the right of the contractor to recover judgment against said person or company. Execution may be taken out upon the entry of judgment, and levied upon any property of said person or company subject to execution. In the event that said person or company shall file the written election to perform such work at its own cost and expense and under its own direction, no further proceedings shall be taken in the matter unless such person or company neglects or fails for thirty days, or for such further time as the city council may grant, to make said improvement. In the event that the improvement of the portions of the street or streets above described, between the rails and for two feet on each side thereof, and between the tracks if there be more than one, shall not be made with diligence, or in all respects similar to the improvement of the rest of the street, or with the same materials or under the same specifications, and to the satisfaction of the superintendent of streets, the city council of said city may, by resolution entered in its minutes, prescribe such terms and conditions as to it may seem fit and proper before permitting the said person or company to continue with the said improvement. If the said person or company shall, after three days' notice of the adoption of said resolution, fail to comply with the terms and conditions so prescribed, the said city council may declare said person or company to have forfeited its privilege of performing such work under its own direction. Whereupon the street superintendent shall advertise for bids for the performance of such work, or such portions thereof as may remain uncompleted, and the contract therefor shall be awarded and entered into in the same manner hereinbefore provided for the awarding and execution of contracts where said person or company has not

elected to make the improvement under its own direction; and upon the completion of the improvement, the contractor to whom such contract may be awarded, or his assigns, shall be entitled to a certificate from the street superintendent similar to that hereinbefore provided for, and shall have the right to collect from said person or company by suit the amount specified in such certificate in all respects the same as is hereinbefore provided where the contract is let for such improvement in the first instance.

Council may include various kinds of work in its order.

Subdivision Thirteen.—The said council may include in one resolution of intention and order any of the different kinds of work mentioned in this act, and may include any number of streets and rights of way or portion thereof in one proceeding and one contract, and it may except therefrom any of said work already done upon the street to the official grade. The lots and portions of lots fronting upon said accepted work already done shall not be included in the frontage assessment for the class of work from which the exception is made; provided, that this shall not be construed so as to affect the special provisions as to grading contained in this act. (As amended Statutes 1921, p. 300.)

Superintendent to make assessment for work. Assessment, how made and what to show.

Sec. 8. After the contractor of any street work has fulfilled his contract to the satisfaction of the street superintendent of said city, or city council on appeal the street superintendent shall make an assessment to cover the sum due for the work performed and specified in said contract (including any incidental expenses) in conformity with the provisions of the preceding sections, according to the character of the work done; or if any direction and decision be given by said council on appeal, then in conformity with such direction and decision, which assessment shall briefly refer to the contract, the work contracted for and performed, and shall show the amount to be paid therefor, together with any incidental expenses, the rate per front foot assessed, if the assessment be made per front foot, the amount of each assessment, the name of the owner of each lot or portion of a lot (if known to the street superintendent); if unknown, the word "unknown" shall be written opposite the number of the lot, and the amount assessed thereon, the number of each lot or portion or portions of a lot assessed, and shall have attached thereto a diagram exhibiting each street or street crossing, lane, alley, place, or court on which any work has been done, and showing the relative location of each district, lot or portion of lot to the work done, numbered to correspond with the numbers in the assessments, and showing the number of feet fronting, or number of lots assessed, for said work contracted for and performed. [As amended, Statutes 1889, p. 166.]

Form of warrant. Record of warrant. Delivered to contractor.
Course to be pursued in case of error.

Sec. 9. To said assessment shall be attached a warrant, which shall be signed by the superintendent of streets and countersigned by the mayor of said city. The said warrant shall be substantially in the following form:

FORM OF WARRANT.

By virtue hereof, I (name of the superintendent of streets), of the city of ———, county of———, (or city and county of———,) and State of California, by virtue of the authority vested in me as said superintendent of streets, do authorize and empower (name of contractor) (his or their) agents, or assigns to demand and receive the several assessments upon the assessment and diagram hereto attached, and this shall be (his or their) warrant for the same.

(Date)———. (Name of superintendent of streets.)

Countersigned by (name of mayor.)

Said warrant, assessment and diagram, together with the certificate of the city engineer shall be recorded in the office of said superintendent of streets. When so recorded the several amounts assessed shall be a lien upon the lands, lots, or portions of lots assessed, respectively, for the period of two years from the date of said recording, unless sooner discharged; such lien shall be subordinate to all special assessment liens previously imposed upon the same property, but it shall have priority over all special assessment liens which may thereafter be created against the said property; and from and after the date of said recording of any warrant, assessment, diagram and certificate all persons mentioned in section 11 of this act shall be deemed to have notice of the contents of the records thereof. After said warrant, assessment, diagram and certificate are recorded, the same shall be delivered to the contractor, or his agents or assigns, on demand, but not until after the payment to the said superintendent of streets of the incidental expenses not previously paid by the contractor or his assigns; and by virtue of said warrant, said contractor or his agent or assigns, shall be authorized to demand and receive the amount of the several assessments made to cover the sum due for the work specified in such contracts and assessments. Whenever it shall appear by any final judgment of any court in this state that any suit brought to foreclose the lien of any sum of money assessed to cover the expense of said street work done under the provisions of this act has been defeated by reason of any defect, error, informality, omission, irregularity, or illegality, in any assessment hereafter to be made and issued, or in the recording thereof, or in the return thereof, made to or recorded by said superintendent of streets, any person interested therein may, at any time within three months after the entry of said final judgment apply to said superintendent of streets who issued the same, or to any superintendent of streets in office at the time of said application, for another assessment to be issued in conformity to law; and said superintendent shall, within fifteen

days after the date of said application, make and deliver to said applicant a new assessment, diagram and warrant in accordance with law, and the acting mayor shall countersign the same as now provided by law, which assessment shall be a lien for the period of two years from the date of said assessment, and be enforced as provided in section 7 of this act. (As amended Statutes 1921, p. 551.)

Demand for payment of assessment. Return of warrant or failure to return. Extension of time. Interest as penalty.

Sec. 10. The contractor, or his assigns, or some person in his or their behalf, shall call upon the persons assessed, or their agents, if they can conveniently be found, and demand payment of the amount assessed to each. If any payment be made, the contractor, his assigns, or some person in his or their behalf, shall receipt the same upon the assessment in presence of the person making such payment, and shall also give a separate receipt if demanded. Whenever the person so assessed, or his agent, cannot conveniently be found, or whenever the name of the owner of the lot is stated as "unknown" on the assessment, then the said contractor, or his assigns, or some person in his or their behalf, shall publicly demand payment on the premises assessed. The warrant shall be returned to the superintendent of streets within thirty days after its date, with a return indorsed thereon, signed by the contractor, or his assigns, or some person in his or their behalf, verified upon oath, stating the nature and character of the demand, and whether any of the assessments remain unpaid, in whole or in part, and the amount thereof. Thereupon the superintendent of streets shall record the return so made, in the margin of the record of the warrant and assessment, and also the original contract referred to therein, if it has not already been recorded at full length in a book to be kept for that purpose in his office, and shall sign the record. The said superintendent of streets is authorized at any time to receive the amount due upon any assessment list and warrant issued by him, and give a good and sufficient discharge therefor; provided, that no such payment so made after suit has been commenced, without the consent of the plaintiff in the action, shall operate as a complete discharge of the lien until the costs in the action shall be refunded to the plaintiff; and he may release any assessment upon the books of his office, on the payment to him of the amount of the assessment against any lot with interest, or on the production to him of the receipt of the party or his assigns to whom the assessment and warrant were issued; and if any contractor shall fail to return his warrant within the time and in the form provided in this section, he shall thenceforth have no lien upon the property assessed; provided, however, that in case any warrant is lost, upon proof of such loss a duplicate can be issued, upon which a return may be made, with the same effect as if the original had been so returned; provided, further, that the street superintendent may for cause shown on written petition from the contractor or his assigns filed in his office prior to the expiration of said thirty days from the date of the warrant,

extend the time for the making of said return for a period not to exceed thirty days additional, which extension shall, with its date, be noted on the warrant. After the return of the assessment and warrant as aforesaid, all amounts remaining due thereon shall draw interest at the rate of ten per cent per annum until paid. [As amended, Statutes 1913, p. 407.]

Owners may object to warrant. Hearing and appeal.

Sec. 11. The owners, whether named in the assessment or not, the contractor or his assigns, and all other persons directly interested in any work provided for in this act, or in the assessment, feeling aggrieved by any act or determination of the superintendent of streets in relation thereto, or who claim that the work has not been performed according to the contract in a good and substantial manner, or having or making any objection to the correctness or legality of the assessment or other act, determination, or proceedings of the superintendent of streets, shall, within thirty days after the date of the warrant, appeal to the city council, as provided in this section, by briefly stating their objections in writing and filing the same with the clerk of the said city council. Notice of the time and place of the hearing, briefly referring to the work contracted to be done, or other subject of appeal, and to the acts, determinations or proceedings objected to or complained of, shall be published for five days. Upon such appeal, the said city council may remedy and correct any error or informality in the proceedings, and revise and correct any of the acts or determinations of the superintendent of streets relative to said work, may confirm, amend, set aside, alter, modify or correct the assessment in such manner as to them shall seem just, and require the work to be completed according to the directions of the city council, and may instruct and direct the superintendent of streets to correct the warrant, assessment or diagram in any particular, or to make and issue a new warrant, assessment and diagram, to conform to the decisions of said city council in relation thereto, at their option. All the decisions and determinations of said city council upon notice and hearing as aforesaid, shall be final and conclusive upon all persons entitled to appeal under the provisions of this section, as to all errors, informalities, and irregularities, which said city council might have remedied and avoided during the progress of the proceedings or which it can at that time remedy. No assessment, warrant, diagram or affidavit of demand and nonpayment after the issue of the same and no proceedings prior to the assessment shall be held invalid by any court for any error, informality or other defect in the same where the resolution of intention of the city council to order the work to be done, for which the assessment is made has been actually published in any newspaper of said city for the length of time prescribed by law. (As amended, Statutes 1923, p. 110.)

Contractor may sue on delinquent assessment. Attorneys fees. Demand in writing prerequisite. Proof of service. Consolidation of actions. Evidence of regularity. Redemption.

Sec. 12. At any time after the period of thirty-five days from the day of the date of the warrant as herein provided or if an appeal is taken to the city council as provided in section 11 of this act, or an extension of time is granted to the contractor in which to make his return as provided in section 10 of this act, at any time after five days from either the decision of said council or the expiration of said extension or after the return of the warrant or assessment, after the same may have been corrected, altered or modified as provided in said section 11 (but not less than thirty-five days from the date of the warrant), the contractor or his assignee may sue, in his own name, the owner of the land, lots, or portions of lots, assessed on the day of the date of the recording of the warrant, assessment, and diagram, or any day thereafter during the continuance of the lien of said assessment, and recover the amount of any assessment remaining unpaid, with interest thereon at the rate of ten per cent per annum until paid. And in all cases of recovery under the provisions of this act, where suit has been brought after one year from the date of the assessment or after personal demand has been made on the owner as hereinafter provided, the plaintiff shall recover the sum of fifteen dollars, in addition to the taxable costs as attorney's fees, but not any percentage upon said recovery; but no suit shall be brought for the recovery of any such assessment and no attorney's fees or costs shall be recovered until a demand in writing has been served personally on the owner of the lot or parcel of land assessed and such owner has failed to pay such assessment before the expiration of ten days after the service of such demand, or unless one year has elapsed from the date of the assessment. Proof of service of such demand shall be made by affidavit in like manner as proof of service of summons in a civil action. If the contractor or his agent or any person acting in behalf of the contractor shall, prior to the filing of a complaint for the recovery of any assessment as herein provided, make any written demand upon or present any bill or notice in writing to such owner, demanding, requesting or notifying such owner to pay or that there is due, attorney's fees or court costs in connection with the collection of such assessment, then the contractor shall forfeit to such owner the amount of such assessment and the superintendent of streets is authorized, upon written demand of such owner, accompanied by the affidavit of such owner, that such written demand, bill or notice for the payment of attorney's fees and costs, or either thereof, prior to the commencement of suit, to mark said assessment "paid," and such assessment shall thereby be deemed to be paid and the lien thereof released. When the ownership of two or more lots or parcels of land on which assessments in the same proceeding have not been paid is identical, one action may be brought to collect the assessments on all of said lots or parcels of land, and in case more than one action is brought against

the owner of more than one lot or parcel of land where the ownership is identical, as aforesaid, the court shall, upon the motion of such owner or owners, consolidate such actions, and in the event of such consolidation of actions and recovery therein, only fifteen dollars as attorney's fee shall, unless otherwise ordered by the court, be recovered; and when suit has been brought as in this section provided, the plaintiff shall be entitled to have and recover said attorney's fee, and taxable costs, notwithstanding that the suit may be settled or a tender may be made before a recovery in said action, and he may have judgment therefor. Suit may be brought in the superior court within whose jurisdiction the city is in which said work has been done, and in case any of the assessments are made against lots, portions of lots, or lands the owners of which cannot, with due diligence, be found, the service of summons in each of such actions may be had in such manner as is prescribed in the codes and laws of this state. The said warrant, assessment, certificate, and diagram, with the affidavit of service of demand and non-payment shall be held prima facie evidence of the regularity and correctness of the assessment and of the prior proceedings and acts of the superintendent of streets and city council upon which said warrant, assessment and diagram are based, and like evidence of the right of the plaintiff to recover in the action. The court in which said suit shall be commenced shall have power to adjudge and decree a lien against the premises assessed, and to order such premises to be sold on execution, as in other cases of the sale of real estate by the process of said court; and on appeal, the appellate courts shall be vested with the same power to adjudge and decree a lien and to order such premises to be sold on execution or decree as is conferred on the court from which an appeal is taken. Such premises, if sold, may be redeemed as in other cases. In all suits now pending, or hereafter brought to recover street assessments, the proceedings therein shall be governed and regulated by the provisions of this act, and also, when not in conflict herewith, by the codes of this state. This act shall be liberally construed to effect the ends of justice. [As amended, Statutes 1913, p. 408.]

New assessments and bonds when old have been declared invalid.

Court to point out irregularity, and order new assessment. City

Council may set aside assessment. Procedure.

Sec. 12¼. Whenever any assessment heretofore issued or which may be hereafter issued is or shall be void, or unenforcible, for any cause, or if bonds shall have been, or shall be, issued to represent any assessments and such issuance shall not have been, or shall not be effective through the curative provisions thereof to make them valid and enforceable, then, in any of such events a reassessment therefor may be issued. The true intent and meaning of this section is to make the cost and expense of work or improvement made through an attempted compliance with this act, payable by the real estate benefited by such work or improvement by making a reassessment therefor.

Such power of reassessing embraces both a full and a partial reassessment, and is not exhausted by a single attempted exercise thereof.

A reassessment shall be ordered under any one of three circumstances:

First. Where the owner or holder of any assessments, or of bonds issued under the provisions of the act entitled "An act to provide a system of street improvement bonds to represent certain assessments for the cost of street work and improvements within municipalities, and also for the payment of such bonds," approved February 27, 1893, to represent assessments requests the legislative body of the city in which the assessment has been or shall be issued to order a reassessment. In such event if said legislative body be of the opinion that the assessments or bonds in question are not enforceable, it shall order the making and issuing of a reassessment covering only the assessments owned or held by the petitioner, or the assessments represented by the bonds owned or held by such petitioner.

Second. Whenever any court of competent jurisdiction in any suit to foreclose the lien of any assessment or to enforce the obligation of any bond issued to represent any assessments issued under this act, has for any reason held such lien unenforceable, then it shall in and by its decree direct the making of a reassessment to cover the assessments involved in such suit.

Third. Whenever any court of competent jurisdiction in any suit to set aside the lien of any assessment or of any bond representing any assessment, or in any suit to quiet title against the lien of any such assessment, or bond, shall in its judgment decree such assessments or bonds to be void, or unenforceable, then it shall in and by its decree direct the making of a reassessment to cover the assessments involved in such suit.

The manner of making, issuing and enforcing the reassessments shall be as follows:

The superintendent of streets shall, upon entering of a decree of court directing a reassessment or upon the making of an order by the legislative body of the city directing a reassessment, proceed to make a reassessment, in the following manner:

If the reassessment be a partial one only, then it shall not be necessary for the diagram to show any other lots than the ones covered by such partial reassessment. If it be a full reassessment, however, then it shall be upon the lots fronting on said work if the original assessment was one made on the front foot plan; if the original assessment was made against a district, then the superintendent of streets shall prepare and file with the reassessment a diagram showing the lots, pieces or parcels of land deemed by him to have been benefited by the work or improvement. The reassessment shall assess upon and against each of the lots, pieces, or parcels of land contained therein an amount arrived at as follows: The benefits derived, or to be derived by each

of the said lots, pieces or parcels of land from the work or improvement estimated as of the date of the original assessment shall first be listed. Then there shall be added thereto interest thereon from thirty days after the date of recording the original assessment at the rate of seven per cent (7%) per annum, and the total sum shall constitute and be the amount of the proposed several assessments in such reassessment. The total of such reassessment, however, exclusive of interest, shall not exceed the cost of the work or improvement. Such assessment need not be in any prescribed form, but shall refer to the original assessment, give the date of the original assessment and state that it is made pursuant to the order of the legislative body of the city or decree of the court, as the case may be, and shall be accompanied by a diagram showing the lots to be reassessed and their relation to the work. It shall then be presented to the legislative body, which shall fix a time for hearing before it. Such time must be at least twenty days after the reassessment is so presented. The city clerk shall then advertise the time of such hearing before the legislative body by publishing a notice in the newspaper in which the notice of award of contract for the improvement for which the assessment was made, was published unless the legislative body directs publication in some other newspaper. If the reassessment is to be against certain specified lots only, this fact, together with an enumeration of the lots shall be stated in the notice. If the reassessment is to be against the lots fronting upon the improvement, this fact shall be stated in the notice. If the reassessment is to be against the property in a district then this fact shall be stated in the notice and a description of the district shall be set forth and the assessment diagram referred to for all particulars. Such notice shall be published for five insertions, if the paper be a daily, or for two insertions if the paper be published less frequently. At the time fixed for said hearing, or at such time or times to which the same may thereafter be adjourned the legislative body shall consider the objections to said reassessment and in its discretion informally direct the revision, correction or modification of such reassessment in such manner as is most equitable to apportion to each lot, piece or parcel of land thereby benefited the amount of the actual benefits derived from said improvement. When such reassessment shall have been revised, or corrected or modified so as to comply with the judgment of said legislative body, then it shall pass a resolution confirming the reassessment. The street superintendent shall thereupon record the reassessment with a certificate at the end thereof by the city clerk, that it is the reassessment approved by the legislative body of the city. He shall also note opposite the several assessments in the original assessment that have been displaced by the reassessment the fact that the reassessment has been made, giving its date, and shall credit upon such reassessment all payments theretofore made upon the original assessment, or upon the bonds issued to represent the same, together with interest on such payment at the rate of seven per cent per annum from and after the date of such payments.

Such reassessments shall be collectible and payable in the same manner as an original assessment and shall be enforceable by suit in the same manner provided in this act for enforcing an original assessment, and shall have the same weight in evidence. In the event that bonds issued under the original assessment they shall also issue upon the reassessment for such sum as may be reassessed against the lot, piece or parcel of land covered thereby. When the reassessment is recorded the original assessment shall be canceled by the street superintendent so far as it affects the particular assessments involved. New bonds shall not be issued until the original bonds are delivered up to the city treasurer, who shall cancel the same. The lien of such reassessment shall hold its relative rank as to other special assessment liens as of the date of the original assessment. (As amended Statutes 1923, p. 111.)

City council may use discretion in completion of improvements.

Sec. 12½. The city council instead of waiting until the completion of the improvement may in its discretion, and not otherwise, upon the completion of two blocks or more of any improvement, order the street superintendent to make an assessment for the proportionate amount of the contract completed, and thereupon proceedings and rights of collection of such proportionate amount shall be had as in sections 8, 9, 10, 11 and 12 of the act of which this is amendatory is provided. [New section, Statutes 1889, p. 169.]

Repairs. Contract for repairs may be let.

Contractor may sue owners. Penalties for neglect.

Sec. 13. When any portion of any street, alley, or public place in said city shall be out of repair or needing reconstruction, or in a condition to interfere with the public convenience in the use thereof, it shall be the duty of the superintendent of streets to notify the owner of any lot or portion of a lot, fronting on the portion of such street, alley, or public place, so out of repair or needing reconstruction, to repair or reconstruct such portion of said street, alley, or public place, to the center line of said street, alley, or public place, in front of the property of which he is the owner, or to repair the sidewalk in front of such property in case such sidewalk shall need repair or reconstruction, and he shall state in such notice what work is required to be done, and what materials shall be used in said work and how the same shall be done. If said repairs or reconstruction be not commenced within ten days after notice given, as aforesaid, and prosecuted to completion diligently, the said superintendent of streets may under authority from said city council let a contract for the performance of such work. He shall post notice at his office for two days inviting bids for the doing of said work of repair or reconstruction, and the contract shall be awarded by him to the lowest bidder, and a contract in writing shall be entered into with the successful bidder. Upon the completion of said repairs or reconstruction to the satisfaction of said superintendent of streets, he shall make and deliver to said contractor a certificate to the effect that

said repairs or reconstruction, or both, have been properly made, and state what amount is payable by each owner for the same, which certificate shall be recorded in the office of said superintendent of streets in a book kept for that purpose, and all owners of property in front of which such improvement shall have been performed, shall be deemed to have notice of the contents of the record thereof. The contractor may make demand for the amount due by serving written notice upon the owners, referring to the certificate so recorded, and if the contractor be not paid on demand, he shall have the right to sue each owner for the amount due and payable from each respectively, and the said certificate of the superintendent of streets shall be prima facie evidence of the amount claimed for the work and materials and of the right of the contractor to recover for the same in such action, and the amount so due and payable shall be a first lien upon the respective lots, pieces or parcels of land against which it may be charged and shall have the same effect as the lien hereinbefore provided for in section 9 of this act and may be enforced in the same manner.

In addition, the city council shall have power by ordinance to prescribe the penalties that shall be incurred by any owner for neglecting or refusing to make repairs when required, which penalties shall be recovered for the use of the city by prosecution in the name of the people of the State of California, in the court having jurisdiction thereof, and may be applied, if deemed expedient, by the said city council in the payment of the expense of any such repairs not otherwise provided for [As amended, Statutes 1911, p. 633.]

Certificate of superintendent. Prima facie evidence, etc.

Sec. 14. If the expenses of the work and material for such improvements, after the completion thereof, and the delivery to said contractor of said certificate, be not paid to the contractor so employed, or his agent or assignee, on demand, the said contractor or his assignee, shall have the right to sue such owner, tenant, or occupant for the amount contracted to be paid; and said certificate of the superintendent of streets shall be prima facie evidence of the amount claimed for said work and materials, and of the right of the contractor to recover for the same in such action. Said certificate shall be recorded by the said superintendent of streets in a book kept by him in his office for that purpose, properly indexed, and the sum contracted to be paid shall be a lien, the same as provided in section 9 of this act, and may be enforced in the same manner.

Penalties.

Sec. 15. In addition, and as cumulative to the remedies above given, the city council shall have power, by resolution or ordinance, to prescribe the penalties that shall be incurred by any owner or person liable, or neglecting, or refusing to make repairs when required, as provided in section 13 of this act, which fines and penalties shall be recovered for the use of the city by prosecution in the name of the

people of the State of California, in the court having jurisdiction thereof, and may be applied, if deemed expedient by the said council, in the payment of the expenses of any such repairs not otherwise provided for.

Who deemed to be the owner.

Sec. 16. The person owning the fee, or the person in whom, on the day the action is commenced, appears the legal title to the lots and lands, by deeds duly recorded in the county recorder's office of each county, or the person in possession of lands, lots, or portions of lots or buildings under claim, or exercising acts of ownership over the same for himself, or as the executor, administrator, or guardian of the owner, shall be regarded, treated and deemed to be the "owner" (for the purpose of this law), according to the intent and meaning of that word as used in this act. And in case of property leased, the possession of the tenant or lessee holding and occupying under such persons shall be deemed to be the possession of such owner.

Tenants or lessees.

Sec. 17. Any tenant or lessee of the lands or lots liable may pay the amount assessed against the property of which he is the tenant or lessee under the provisions of this act, or he may pay the price agreed on to be paid under the provision of section 13 of this act, either before or after suit brought, together with costs, to the contractor, or his assigns, or he may redeem the property, if sold on execution or decree for the benefit of the owner, within the time prescribed by law, and deduct the amount so paid from the rents due and to become due from him, and for any sums so paid beyond the rents due from him, he shall have a lien upon and may retain possession of the said land and lots until the amount so paid and advanced be satisfied, with legal interest, from accruing rents, or by payment by the owner.

Records of superintendent of streets.

Sec. 18. The records kept by the superintendent of streets of said city, in conformity with the provisions of this act, and signed by him, shall have the same force and effect as other public records, and copies therefrom, duly certified, may be used in evidence with the same effect as the originals. The said records shall, during all office hours, be open to the inspection of any citizen wishing to examine them, free of charge.

Notices, how served.

Sec. 19. Notices in writing which are required to be given by the superintendent of streets under the provisions of this act, may be served by any person with the permission of the superintendent of streets, and the fact of such service shall be verified by the oath of the person making it, taken before the superintendent of streets, who for that purpose and for all other purposes and in all cases where a verification is required under the provisions of this act is hereby author-

ized to administer oaths, or other person authorized to administer oaths, or such notices may be delivered to the superintendent of streets himself, who must also verify the service thereof, and who shall keep a record of the fact of giving such notices, when delivered by himself personally, and also of the notices and proof of service when delivered by any other person. [As amended, Statutes 1889, p. 170.]

City to keep streets in repair (repealed).

Sec. 20. [Repealed, Statutes 1911, p. 635.]

Superintendent shall keep office and direct cleaning of sewers.

Sec. 21. The superintendent of streets shall keep a public office in some convenient place within the municipality, and such records as may be required by the provisions of this act. He shall superintend and direct the cleaning of all sewers, and the expense of the same shall be paid out of the street or sewer fund of said city.

Duties of superintendent and shall furnish bond.

Sec. 22. It shall be the duty of the superintendent of streets to see that the laws, ordinances, orders, and regulations relating to the public streets and highways be fully carried into execution, and that the penalties thereof are rigidly enforced. He shall keep himself informed of the condition of all of the public streets and highways, and also of all public buildings, parks, lots and grounds of said city, as may be prescribed by the city council. He shall, before entering upon the duties of his office, give bonds to the municipality, with such sureties and for such sums as may be required by the city council, and should he fail to see the laws, ordinances, orders, and regulations relative to the public streets or highways carried into execution, after notice from any citizen of a violation thereof, he and his sureties shall be liable upon his official bond to any person injured in his person or property in consequence of said official neglect.

City not liable for damages. Who liable.

Sec. 23. If, in consequence of any graded street or public highway improved under the provisions of this act being out of repair and in condition to endanger persons or property passing thereon, any person while carefully using said street or public highway, and exercising ordinary care to avoid the danger, suffer damage to his person or property through any such defect therein, no recourse for damages thus suffered shall be had against such city; but if such defect in the street or public highway shall have existed for the period of twenty-four hours or more after notice thereof to the said superintendent of streets, then the person or persons on whom the law may have imposed the obligations to repair such defect in the street or public highway, and also the officer or officers through whose official negligence such defect remains unrepaired, shall be jointly and severally liable to the party injured for the damages sustained; provided, that said superintendent

has the authority to make such repairs, under the direction of the city council, at the expense of the city.

City council may construct sewers and manholes, etc., and provide for cleaning same. Remonstrance.

Sec. 24. The city council of such city shall have full power and authority to construct sewers, gutters, and manholes, and provide for the cleaning of the same, and culverts or cesspools, or crosswalks or sidewalks, or any portion of any sidewalk upon or in any street, avenue, lane, alley, court, or place in such city; and also for drainage purposes, over or through any right of way obtained or granted for such purposes, with necessary and proper outlet or outlets to the same, of such materials, in such a manner, and upon such terms as it may be deemed proper. None of the work or improvements described in this section shall be stayed or prevented by any written or any other remonstrance or objection, unless such council deems proper. [As amended, Statutes 1893, p. 173.]

Duty of city council to repair and water. Street contingent fund. Work, how done.

Sec. 25. The city council may, in its discretion, repair and water streets that shall have been graded, curbed, and planked, paved or macadamized, and may build, repair and clean sewers, and shall provide a street contingent fund at the same time and in the same manner as other funds are provided out of which to pay the costs and expenses of making said repairs, and watering said streets, and building, repairing and cleaning said sewers; but whenever an unaccepted street or part of a street requires regrading, recurbing, repilling, repaving, replanking, regraveling, or remacadamizing, or requires new culverts, or new crosswalks, or new sidewalks, or new sewers, the work shall be advertised and let out by contract, and the costs and expenses thereof shall be assessed upon the property affected or benefited thereby, the same as in the first instance.

May designate what fund to be used. Remainder to be assessed proportionately.

Sec. 26. The city council may, in its discretion, order, by resolution, that the whole or any part of the cost and expenses of any of the work mentioned in this act be paid out of the treasury of the municipality from such fund as the council may designate. Whenever a part of such cost and expenses is so ordered to be paid, the superintendent of streets, in making up the assessment heretofore provided for such cost and expenses shall first deduct from the whole cost and expenses such part thereof as has been so ordered to be paid out of the municipal treasury, and shall assess the remainder of said cost and expenses proportionately upon the lots, parts of lots, and lands fronting on the streets where said work was done, or liable to be assessed for such work, and in the manner heretofore provided. [As amended, Statutes 1891, p. 206.]

PART II.

Sewers, construction of and assessment for.

Sec. 27. Whenever the city council deem it necessary to construct a sewer, then the said council may, in its discretion, determine to construct said sewer, and assess the cost and expenses thereof upon the property to be affected or benefited thereby, in such manner and within such assessment district as it shall prescribe, and the lien therefor upon said property shall be the same as is provided in section 9 of this act, or said council may determine to construct said sewer and pay therefor out of the street contingent fund.

Election to incur indebtedness. Tax to pay interest.

Sec. 28. If, at any time, the city council shall deem it necessary to incur any indebtedness for the construction of sewers, in excess of the money in the street contingent fund applicable to the construction of such sewers, they shall give notice of a special election by the qualified electors of the city, to be held to determine whether such indebtedness shall be incurred. Such notice shall specify the amount of indebtedness proposed to be incurred, the route and general character of the sewer or sewers to be constructed, and the amount of money necessary to be raised annually by taxation for an interest and sinking fund as hereinafter provided. Such notice shall be published for at least three weeks in some newspaper published in such city, and no other question or matter shall be submitted to the electors at such election. If upon a canvass of the votes cast at such election, it appears that not less than two-thirds of all the qualified electors voting at such election shall have voted in favor of incurring such indebtedness, it shall be the duty of the city council to pass an ordinance providing for the mode of creating such indebtedness and of paying the same; and in such ordinance provision shall be made for the levy and collection of an annual tax upon all the real and personal property, subject to taxation, within such city, sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within a period of not more than twenty years from the time of contracting the same. It shall be the duty of the city council in each year thereafter, at the time when other taxes are levied to levy a tax sufficient for such purpose in addition to the taxes authorized to be levied for city purposes. Such tax, when collected, shall be kept in the treasury as a separate fund, to be inviolably appropriated to the payment of the principal and interest of such indebtedness.

Bonds.

Sec. 29. If bonds are issued under the provisions of the last section, said bonds shall be in sums of not less than one hundred dollars, nor more than one thousand dollars, shall be signed by the mayor and treasurer of the city, and the seal of the city shall be affixed

thereto. Coupons for the interest shall be attached to each bond signed by the mayor and treasurer. Said bonds shall bear interest, to be affixed by the city council, at the rate of not to exceed five per cent per annum.

Bonds, sale of.

Sec. 30. Before the sale of said bonds, the council shall, at a regular meeting, by resolution, declare its intention to sell a specified amount of said bonds, and the day and hour of such sale, and shall cause such resolution to be entered in the minutes, and shall cause notice of such sale to be published for fifteen days in at least one newspaper published in the city in which the bonds are issued, and one published in the city and county of San Francisco, and in any other newspaper in the state at their discretion. The notice shall state that sealed proposals will be received by the council for the purchase of the bonds on the day and hour named in the resolution. The council, at the time appointed, shall open the proposals and award the purchase of the bonds to the highest bidder, but may reject all bids.

Bonds not sold for less than par.

Sec. 31. The council may sell said bonds at not less than par value, without the notice provided for in the preceding section.

Proceeds of sale of bonds deposited in city treasury. Sewer fund.

Sec. 32. The proceeds of the sale of the bonds shall be deposited in the city treasury to the account of the sewer fund, but no payment therefrom shall be made, except to pay for the construction of the sewer or sewers for the construction of which the bonds were issued, and upon the certificate of the superintendent of streets and the city engineer, that the work has been done according to the contract; provided, that after the completion of the sewers for the construction of which said bonds were issued, if there be any money of said fund left in the treasury, the same may be transferred to the general fund for general purposes. [As amended, Statutes 1887, p. 148.]

Plans and specifications. Advertisements. Bids.

Sec. 33. Whenever said council shall determine to construct any sewer, and pay therefor out of the street contingent fund, or by the issuance of bonds, as above provided, then said council shall cause to be prepared plans and specifications of said work in sections, and shall advertise for twenty days in at least one newspaper published in the city in which the sewer is to be constructed, and one in the city and county of San Francisco, for sealed proposals for constructing said sewer. The work may be let in sections, and must be awarded to the lowest responsible bidder, the council having the right to reject any and all bids. The work shall be done and the materials furnished under the supervision and to the satisfaction of the superintendent of streets and the city engineer.

PART III.

City engineer to do surveying. Definitions.

Sec. 34. First. The city engineer, or where there is no city engineer, the county, or city and county surveyor, shall be the proper officer to do the surveying and other engineering work necessary to be done under this act, and to survey and measure the work to be done under contracts for grading and macadamizing streets, and to estimate the costs and expenses thereof; and every certificate signed by him in his official character shall be prima facie evidence in all courts in this state of the truth of its contents. He shall also keep a record of all surveys made under the provisions of this act, as in other cases. In all those cities where there is no city engineer the city council thereof is hereby authorized and empowered to appoint a suitable person to discharge the duties herein laid down as those of city engineer, and all the provisions hereof applicable to the city engineer, shall apply to such person so appointed. Said city council is hereby empowered to fix his compensation for such services.

Second. The words "work," "improve," "improved" and "improvement," as used in this act, shall include all work mentioned in this act, and also the construction, reconstruction and repairs of all or any portion of said work.

Third. The term "incidental expenses," as used in this act, shall include the compensation of the city engineer for work done by him; also the cost of printing and advertising, as provided in this act, and not otherwise; also the compensation of the person appointed by the superintendent of streets to take charge of and superintend any of the work mentioned in section 35 of this act; also the expenses of making the assessment for any work authorized by this act. All demands for incidental expenses mentioned in this subdivision shall be presented to the street superintendent by itemized bill, duly verified by oath of the demandant.

Fourth. The notices, resolutions, orders or other matter required to be published by the provisions of this act, and of the act of which this is amendatory, shall be published in a daily newspaper, in cities where such there is, and where there is no daily newspaper, in a semi-weekly or weekly newspaper, to be designated by the council of such city, as often as the same is issued, and no other statute shall govern or be applicable to the publications herein provided for; provided, however, that only in case there is no daily, semi-weekly or weekly newspaper printed or circulated in any such city, then such notices, resolutions, orders or other matters as are herein required to be published in a newspaper, shall be posted and kept posted for the same length of time as required herein for the publication of the same in a daily, semi-weekly or weekly newspaper, in three of the most public places in such city. Proof of the publication or posting of any notice provided

for herein shall be made by affidavit of the owner, publisher or clerk of the newspaper, or of the poster of the notice. No publication or notice, other than that provided for in this act, shall be necessary to give validity to any of the proceedings provided for therein.

Fifth. The word "municipality" and the word "city," as used in this act, shall be understood and so construed as to include, and is hereby declared to include, all corporations heretofore organized and now existing, and those hereafter organized, for municipal purposes.

Sixth. The words "paved" or "repaved," as used in this act, shall be held to mean and include pavement of stone, whether paving blocks or macadamizing, or of bituminous rock or asphalt, or of iron, wood or other material, whether patented or not, which the city council shall by ordinance adopt.

Seventh. The word "street," as used in this act, shall be deemed to, and is hereby declared to, include avenues, highways, lanes, alleys, crossings, or intersections, courts and places, and the term "main street" means such actually opened street or streets as bound a block; the word "blocks," whether regular or irregular, shall mean such blocks as are bounded by main streets, or partially by a boundary line of the city.

Eighth. The terms "street superintendent" and "superintendent of streets," as used in this act, shall be understood and so construed as to include, and are hereby declared to include, any person or officer whose duty it is, under the law, to have the care or charge of the streets, or the improvement thereof in any city. In all those cities where there is no street superintendent or superintendent of streets, the city council thereof is hereby authorized and empowered to appoint a suitable person to discharge the duties herein laid down as those of street superintendent or superintendent of streets; and all provisions hereof applicable to the street superintendent or superintendent of streets shall apply to such person so appointed.

Ninth. The term "city council" is hereby declared to include any body or board which, under the law, is the legislative department of the government of any city.

Tenth. In municipalities in which there is no mayor, then the duties imposed upon said officer by the provisions of this act shall be performed by the president of the board of trustees, or other chief executive officer of the municipality.

Eleventh. The term "clerk" and "city clerk," as used in this act, is hereby declared to include any person or officer who shall be clerk of the said city council.

Twelfth. The term "quarter block," as used in this act as to irregular blocks, shall be deemed to include all lots or portions of lots having any frontage on either intersecting street half way from such intersection to the next main street, or, when no main street intervenes, all the way to a boundary line of the city.

Thirteenth. The term "one year," as used in this act, shall be deemed to include the time beginning with January first and ending with the thirty-first day of December of the same year.

Fourteenth. References in certain sections, by number, to certain other sections of "this act" refer to the number of the sections of the original act, as heretofore amended, unless it appears from the context that the reference is to the section of this amendatory act, when it shall be construed according to the context. [As amended, Statutes 1907, p. 1000.]

Superintendent of construction. Compensation.

Sec. 35. The superintendent of streets shall, when in his judgment it is necessary, appoint a suitable person to take charge of and superintend the construction and improvement of each and every sewer constructed or improved under the provisions of this act, and of piling and capping sidewalks, or of the paving of whatever character heretofore mentioned, in whole or in part, of one block or more, whose duty it shall be to see that the contract made for the doing of said work is strictly fulfilled in every respect, and in case of any departure therefrom to report the same to the superintendent of streets. Such person shall be allowed for his time actually employed in the discharge of his duties such compensation as shall be just, but not to exceed seven dollars per day. The sum to which the party so employed shall be entitled shall be deemed to be incidental expenses, within the meaning of those words as defined by this act. (As amended Statutes 1921, p. 224.)

Act repealed.

Sec. 36. The act entitled "An act to provide for the improvement of streets, lanes, alleys, courts, places and sidewalks, and the construction of sewers within municipalities," approved March sixth, eighteen hundred and eighty-three, is hereby repealed; provided, that any work or proceedings commenced thereunder prior to the passage of this act shall in nowise be affected hereby, but shall in all respects be finished and completed under said act of March sixth, eighteen hundred and eighty-three, and said repeal shall in nowise affect said work or proceedings.

Time of taking effect on prior statutes or proceedings.

Sec. 37. That said act shall take effect and be in force immediately upon its passage, and all acts and parts of acts in conflict with this act are hereby repealed; and provided, however, that any work or proceeding of the city council commenced under the act of which this is amendatory shall in nowise be affected thereby, but shall in all respects be finished and completed thereunder. [As amended, Statutes 1893, p. 173.]

PART IV.

How changes of street grades are made.

Sec. 38. The city council is hereby empowered to change or modify the grade of any public street, lane, alley, place, or court, and to regrade

or repave the same, so as to conform to such modified grade, in the manner as hereinafter provided. Before any change of grade is ordered the city council shall pass an ordinance or resolution of intention to make such change or modification of grade, and it shall have power at the same time and in the same ordinance or resolution to provide for the actual cost of performing the work of regrading, repaving, sewerage, sidewalking, or curbing of said street or portion of street, with the same or other material with which it was formerly graded, paved, sewered, sidewalked, or curbed; and that the cost of the same shall also be assessed upon the same district which is declared to be benefited by such changed or modified grade. One or more streets or blocks of streets may be embraced in the same ordinance or resolution. Such ordinance or resolution shall be published in the newspaper in which the official notices of the city council are usually printed and published; and such newspaper is to be designated in such ordinance or resolution. Such publication shall be made in every regular issue of such paper for not less than ten days, and shall describe the proposed change or modification of grade or regrading, and shall designate and establish the district to be benefited by such change or modification of grade or regrading, and to be assessed for the cost of the same. Within five days after the first publication of the ordinance or resolution of intention, the superintendent of streets shall cause to be conspicuously posted within the district designated in the ordinance or resolution, notice of the passage of said resolution. Said notices shall be the same in all requirements of contents and posting as the "notices of street work" provided for in section 3 of the original act to which this is amendatory. If no objection to said proposed change or changes, or modifications of grade, shall be filed with the clerk of the council within thirty days from the first publication of the ordinance or resolution of intention hereinbefore mentioned, the city council shall have power to declare such grades to be changed and established in conformity to said ordinance or resolution; provided, that no change of an established grade shall be ordered except on petition of the owners of a majority of the property affected by the proposed change of grade. [As amended, Statutes 1893, p. 89.]

Petition showing damage through change of grade.

Sec. 39. Within thirty days after the first publication of said notice, any person owning property fronting upon said portions of the street or streets where such change of grade is made, may file a petition with the clerk of the city council showing the fact of such ownership, the description and situation of the property claimed to be damaged, its market value, and the estimated amount of damages over and above all benefits which the property would sustain by the proposed change if completed. Such petition shall be verified by the oath of the petitioners or their agents. [As amended, Statutes 1893, p. 90.]

Board of commissioners, who shall constitute.

Sec. 40. Whenever such petition or petitions have been filed, the mayor, surveyor, and superintendent of streets, of the city, or city and county, acting as a board of commissioners, shall assess the benefits, damages, and costs of the proposed change of grade upon each separate lot of land situated within such assessment district, as said lot appears of record upon the last city, or city and county assessment roll. [As amended, Statutes 1893, p. 90.]

Oath to be taken.

Sec. 41. The commissioners shall be sworn to make the assessments of benefits and damages to the best of their judgment and ability, without fear or favor. [As amended, Statutes 1893, p. 90.]

Witnesses may be subpoenaed.

Sec. 42. The commissioners shall have power to subpoena witnesses to appear before them to be examined under oath, which any one of said commissioners is authorized to administer. [As amended, Statutes 1893, p. 90.]

Damages to be assessed. Report to city council.

Sec. 43. The commissioners having determined the damage which would be sustained by each petitioner, in excess of all benefits, shall proceed to assess the total amount thereof, together with the costs, charges, and expenses of the proceedings, upon the several lots of land benefited within the district of assessment; so that each of the lots shall be assessed in accordance with its benefits caused by such work or improvement; and during the progress of their work shall make a report to such city council as often as it may be required. [As amended, Statutes 1893, p. 90.]

What report must contain. Majority report.

Sec. 44. The commissioners shall make their report, in writing, and shall subscribe to the same and file with the city council. In their said report they shall describe separately each piece of property which will sustain damage stating the amount of damages each will sustain over and above all benefits. They shall also give a brief description of each lot benefited within said assessment district, the name of the owner, if known, and the amount of benefits in excess of damages assessed against the same. In case the three commissioners do not agree, the award agreed upon by any two of them shall be sufficient. In designating the lots to be assessed, reference may be had to a diagram of the property in the district affected; such diagram to be attached to and made a part of the report of the commissioners. [As amended, Statutes 1893, p. 90.]

Unknown owners. Errors. Filing of report to be published.

Sec. 45. If in any case the commissioners find that conflicting claims

of title exist, or shall be in ignorance or doubt of the ownership of any lot or land, or any improvement thereon, or any interest therein, it shall be set down as belonging to unknown owners. Error in the designation of the owner or owners of any land or improvements, or particulars of their interest, shall not affect the validity of the assessment. On the filing of said report, the clerk of said city council shall give notice of such filing by the publication of at least ten days in one or more daily newspapers published and circulated in said city; or if there be no daily newspaper, by three successive issues in a weekly, or semi-weekly newspaper so published and circulated; and said notice shall require all persons interested to show cause, if any, why such report should not be confirmed, before the city council, on a day to be fixed by the city council and stated in said notice, which day shall not be less than twenty days from the first publication thereof. [As amended, Statutes 1893, p. 91.]

Objections to be filed in writing. Hearing. New Assessment. Advertising for bids. Proceedings. Awards.

Sec. 46. All objections shall be in writing and filed with the clerk of the city council, who shall at the next meeting after the date fixed in the notice to show cause, lay the said objections, if any, before the council, which shall fix a time for hearing the same; of which time the clerk shall notify the objectors in the same manner as are notified objectors to the original resolution of intention. At the time set, or at such other time as the hearing may be adjourned, the city council shall hear such objections and pass upon the same, and at such time shall proceed to pass upon such report, and may confirm, correct, or modify the same, or may order the commissioners to make a new assessment, report, and plat, which shall be filed, notice given and had, as in the case of an original report. In case the ordinance or resolution of intention also provides for the assessing upon the district the cost of regrading or repaving such street or streets to such changed or modified grade, after the report of the commissioners as to the damages caused by such change of grade has been passed upon by the city council, it shall then advertise for bids to perform the work of regrading, repaving, sewerage, sidewalking, or curbing such street or streets with the same or other material with which the same had been formerly graded, paved, sewerage, sidewalked, or curbed; first causing a notice, with specifications, to be posted conspicuously for five days on or near the council chamber door, inviting sealed proposals for bids for doing such work, and shall also cause notices of said work, inviting said proposals and referring to the specifications posted or on file, to be published two days in a daily, semi-weekly or weekly newspaper published and circulated in said city, and designated by the city council for that purpose, and in case there is no newspaper published in the city, then it shall be posted as provided in section 3 of the original act to which this is amendatory. All proposals or bids offered shall be accompanied by a check, payable to the order of the mayor of the

city, and certified by a responsible bank for that amount, which shall not be less than ten per cent of the aggregate of the proposals; or by a bond for said amount, signed by the bidder and two sureties, who shall justify under oath in double said amount over and above all statutory exemptions. Said proposals or bids shall be delivered to the clerk of the said city council, and said council shall, in open session, examine and publicly declare the same; provided, however, that no proposal or bid shall be considered unless accompanied by a check or a bond satisfactory to the council. The city council may reject any and all bids, and may award the contract to the lowest responsible bidder, which award shall be approved by the mayor or the three-fourths vote of the city council. If not approved by the mayor or the three-fourths vote of the city council, the city council may readvertise for proposals or bids for the performance of the work, as in the first instance, and thereafter proceed in the manner in this section provided. All checks accompanying bids shall be held by the clerk until the bearer has entered into a contract, as herein provided; and in case he refuses so to do, then the amount of his certified check shall be declared forfeited to the city, and shall be collected and paid into its general fund, and all bonds so forfeited shall be prosecuted and the amount thereon collected paid into such fund. Notice of the awards of the contracts shall be published and posted in the same manner as hereinbefore provided for the posting of proposals for said work. [As amended, Statutes 1893, p. 91.]

City clerk to certify contract. Cost of work to be assessed.

Sec. 47. After such contract has been awarded and entered into, the clerk of the city council shall certify to the city council that fact, together with the total amount of the cost of the same, whereupon the city council shall cause to be forwarded to the commissioners a copy of such certificate; whereupon such commissioners shall proceed to assess the cost of doing such work upon all the lots and land lying within the district to be assessed, distributing the same so that each lot will be assessed for its proportion of the same, according to the benefits it receives from the work, and in the same manner in which the damages caused by the change of grade were assessed upon the same. Such commissioners, in making such assessment, shall show the total amount for which each lot or tract is assessed, in excess of all benefits, for the total cost of changing and modifying the grade of the street, as well as the regrading, repaving, sewerage, sidewalking, and curbing of the same, and costs or damages connected therewith. The provisions of the act to which this is amendatory in regard to the mode or manner of the assessment of the cost of such work shall not apply to the work herein contemplated; neither shall the provisions of the same in regard to the issuing of bonds to represent the cost of the same, nor the provisions in regard to the right of protest against the work. [As amended, Statutes 1893, p. 92.]

City clerk to certify copy of report to superintendent of streets. Lien.

Sec. 48. The clerk of said city council shall forward to the street superintendent of the city a certified copy of the report, assessment, and plat, as finally confirmed and adopted by the city council. Such certified copy shall thereupon be the assessment roll, the cost of which shall be provided for by the commissioners, as a portion of the cost of the proceedings therein. Immediately upon receipt thereof by the street superintendent, the assessment therein contained shall become due and payable, and shall be a lien upon all the property contained or described therein. [As amended, Statutes 1893, p. 93.]

Notice that assessment due. Payment of. Delinquency. Publication.

Sale. Deed. Redemption. Fund to be created by treasurer.

Sec. 49. The superintendent of streets shall thereupon give notice, by publication for ten days in one or more daily newspapers published and circulated in said city, or city and county, or two successive insertions in a weekly or semi-weekly newspaper so published and circulated, that he has received said assessment roll, and that all sums levied and assessed in said assessment roll are due and payable immediately, and that the payment of said sums is to be made to him within thirty days from the date of the first publication of said notice. Said notice shall also contain a statement that all assessments not paid before the expiration of said thirty days will be declared to be delinquent, and that thereafter the sum of five per cent upon the amount of such delinquent assessment, together with the cost of advertising each delinquent assessment, will be added thereto. When payment of any assessment is made to said superintendent of streets, he shall write the word "paid" and the date of payment opposite the respective assessment so paid, and the name of the persons by or for whom said assessment is paid, and shall give a receipt therefor. On the expiration of said thirty days, all assessments then unpaid shall be and become delinquent, and said superintendent of streets shall certify such fact at the foot of said assessment roll, and shall add five per cent to the amount of each assessment so delinquent. The said superintendent of streets shall, within five days from the date of such delinquency, proceed to advertise the various sums delinquent, and the whole thereof, including the cost of advertising, which last shall not exceed the sum of fifty cents for each lot, piece, or parcel of land separately assessed, by the sale of the assessed property in the same manner as is or may be provided for the collection of state and county taxes; and after the date of said delinquency, and before the time of such sale herein provided for, no assessment shall be received, unless at the same time the five per cent added to as aforesaid, together with the costs of advertising then already incurred, shall be paid therewith. Said list of delinquent assessments, with a notice of the time and place of sale of the property affected thereby, shall be published daily for five days, in one or more daily newspapers published and circulated in such city, or by at least two insertions in a weekly newspaper so published and

circulated before the day of sale for such delinquent assessment. Said time of sale must not be less than seven days from the date of the first publication of said delinquent assessment list, and the place must be in or in front of the office of said superintendent of streets. All property sold shall be subject to redemption for one year, and in the same manner as in sales for delinquent state and county taxes; and the superintendent of streets shall, if there is no redemption, make and deliver to the purchaser at such sale a deed conveying the property sold, and may collect for each certificate fifty cents, and for each deed one dollar. All provisions of the law in reference to the sale and redemption of property, for delinquent state and county taxes, in force at any given time, shall also then, as far as the same are not in conflict with the provisions of this act, be applicable to the sale and redemption of property for delinquent assessments hereunder, including the issuance of certificates and execution of deeds. The deed of the street superintendent, made after such sale, in case of failure to redeem, shall be prima facie evidence of the regularity of all proceedings hereunder, and of title in the grantee. The superintendent of streets shall from time to time pay over to the city treasurer all moneys collected by him on account of any such assessments. The city treasurer shall, upon receipt thereof, place the same in a separate fund, designating each fund by the name of the street, square, lane, alley, court, or place for the change of grade for which the assessment was made. Payments shall be made from said fund to the parties entitled thereto, upon warrants signed by the commissioners or a majority of them. [As amended, Statutes 1893, p. 93.]

How notice of payment of damages to be made.

Sec. 50. When sufficient money is in the hands of the city treasurer, in the fund voted for the proposed work or improvement, to pay the total cost for damages, as well as for the cost of doing the work, and all other expenses connected therewith, it shall be the duty of the commissioners to notify the owner, possessor, or occupant of the premises damaged, and to whom damages have been awarded, that a warrant has been drawn for the payment of the same, which can be received at the office of such commissioners. Such notification may be made by depositing a notice, postage paid, in the postoffice, addressed to his last known place of residence. If, after the expiration of three days after the service or deposit of the notice in the postoffice, he shall not have applied for such warrant, the same shall be drawn and deposited with the city treasurer, to be delivered to him upon demand. [As amended, Statutes 1893, p. 94.]

Condemnation of premises. Precedents of proceedings. Deficiency, how paid. Priority of warrants.

Sec. 51. If the owner of any premises damaged neglects or refuses, for ten days after the warrant has been placed in the hands of the city

treasurer, subject to his demand, to accept the same, the city council may cause proceedings to be commenced, in the name of the city, to condemn said premises, as provided by law under the right of eminent domain. The ordinance or resolution of intention shall be conclusive evidence of the necessity of the same. Such proceedings shall have precedence, so far as the business of the court will permit, and any judgment for damages therein rendered shall be payable out of the special fund in the treasury for that purpose. At any time after the trial and judgment entered, or pending appeal, the court may order the city treasurer to set apart in the city treasury a sufficient sum from said fund to answer the judgment, and thereupon may authorize or order the municipality to proceed with the proposed work or improvements. In case of a deficiency in said fund to pay the whole assessed judgment and damages, the city council may, in its discretion, order the balance thereof to be paid out of the general fund of the treasury, or to be distributed by the commissioners over the property assessed by a supplementary assessment; but in the last named case, in order to avoid delay, the city council may advance such balance out of any available fund in the treasury, and reimburse the same from the collection of assessments. The treasurer shall pay such warrants in the order of their presentation; provided, that warrants for damages and for costs of performing the work shall have priority over warrants for charges and expenses, and the treasurer shall see that sufficient money remains in the fund to pay all warrants of the first class before paying any of the second. The provisions of section 1251 of the Code of Civil Procedure, requiring the payment of damages within thirty days after the entry of judgment, shall not apply to damages rendered in proceedings under this act. [As amended, Statutes 1893, p. 95.]

Application of other provisions of original act. Work in progress to be continued. Ratification of subsequent proceedings.

Sec. 52. All other provisions contained in the act to which this is amendatory, and which provisions are not in conflict herewith, shall apply to all matters herein contained. All proceedings in any work or improvement, such as is provided for in this act, already commenced and now in progress under another act now in force, or by virtue of an ordinance or resolution of intention heretofore passed, may, from any stage of such proceedings already commenced and now in progress, be continued under this act by resolution of the city council. The said work or improvement may then be conducted under the provisions of this act, with full force and effect in all respects from the stage of such proceedings at and from which such resolution or ordinance shall declare the intention to have such work done or improvement cease under such other acts or ordinances and continued under this act; and from such election so made all proceedings theretofore had are hereby ratified, confirmed, and made valid, and it shall

be unnecessary to renew or conduct over again any proceedings prior to the passage of this act. [As amended, Statutes 1893, p. 95.]

Act liberally construed.

Sec. 53. This act shall be liberally construed to the end that its purposes may be effected. No error, irregularity, informality, and no neglect or omission of any officer of the city, in any proceeding taken hereunder which does not directly affect the jurisdiction of the city council to order the work or improvement shall avoid or invalidate such proceeding or any assessment for the cost of work done thereunder. The exclusive remedy of any person affected or aggrieved thereby shall be by appeal to the city council as herein provided. [As amended, Statutes 1911, p. 634.]

Council to fix time and place of hearings.

Sec. 54. Whenever in proceedings hereunder the time and place for hearing by the city council is fixed and from any cause the hearing is not then and there held or regularly adjourned to a time and place fixed, the power of the city council in the premises shall not thereby be divested or lost. The city council may fix a time and place for the hearing and cause notice thereof to be given by publication by at least one insertion in a daily, semi-weekly or weekly newspaper published and circulated in said city and designated by the council for that purpose such publication to be at least five days before the date of the hearing, and thereupon the city council shall have power to act as in the first instance. [As amended, Statutes 1911, p. 634.]

Description by reference sufficient.

Sec. 55. In all resolutions, notices, orders and determinations subsequent to the resolution of intention a description of the assessment district by reference to the resolution of intention shall be sufficient, and in all resolutions, notices, orders, and determinations subsequent to the "notice of street work" a description of the work by reference to the resolution of intention shall be sufficient. [As amended, Statutes 1913, p. 412.]

City may become contractor. Proceedings.

Sec. 56. When the work prescribed by the resolution of intention is exclusively sidewalk or curbing work with or without such grading as is incidentally necessary to the doing of such sidewalk or curbing work, and no proposals or bids for doing the work are delivered to the clerk, as invited by the notice inviting the same, as provided for in section 5 of this act, the city council may, in its discretion, by a vote of three-fourths of its members in the affirmative, direct that a proposal or bid in the name and on the part of the city be filed, whereupon the contract for doing the work shall be awarded to the city, and the city shall thus be and become the "contractor" within the meaning of this act. And when the time has expired within which, as provided in said

section 5 of this act, the owners may elect to take the contract, shall have expired, and such owners have not so elected, the city shall be deemed to have undertaken to do and complete the work, at the price named in such bid or proposal, within ninety days after the time when as aforesaid it is to be deemed to have undertaken the same, and to begin such work within fifteen days after said time. The city need not enter into a contract with the superintendent of streets, as provided in section 6 of this act, nor give any check or bond, either upon bidding or to secure the performance of the work or payment for labor or materials. The warrant provided for in section 9 of this act shall be delivered to the clerk of the city council, and such clerk is hereby authorized to make on the part of the city the demand provided for in section 10 of this act. Except as in this section expressly provided otherwise, all and singular the provisions of this act shall apply in the case where the city, under the provisions of this section, becomes the contractor, that is to say, undertakes to do the work. And all the rights, dues and remedies of the "contractor," under the provisions of this act, shall accrue to the city in its character of one undertaking to do the work, as provided in this section. [New section, Statutes 1909, p. 399.]

Public work in unincorporated territory. Terms interchangeable.

Sec. 57. The public work provided to be done under this act may be performed under the provisions of this act in unincorporated territory in counties, and all of the provisions of this act shall apply with equal force to such work subject to the definitions and modifications hereinafter contained. Wherever the words "municipality," "municipalities" or "city" shall appear in this act, they shall be and are hereby defined as including cities, cities and counties and counties, and are hereby expressly declared to be interchangeable with any or either of these terms. Wherever the terms "city council" or "council" shall appear in this act, they shall be and are hereby defined as including the board of supervisors of a county, and are hereby expressly declared to be interchangeable with these terms; and all of the provisions of this act extending authority to or imposing duties or obligations upon the city council or council shall apply with equal force to the board of supervisors. Wherever the term "city engineer" shall appear in this act, it shall be and is hereby defined as including the county surveyor of a county, and is hereby expressly declared to be interchangeable therewith; and all of the provisions of this act extending authority to or imposing duties or obligations upon the city engineer shall apply with equal force to the county surveyor. Wherever the terms "city clerk," "clerk of the city council," "clerk of the council," or "clerk" shall appear in this act, they shall be and are hereby defined as including the county clerk of a county, and are hereby expressly declared to be interchangeable therewith; and all of the provisions of this act extending authority to or imposing duties or obligations upon the city clerk, clerk of the city council, clerk of the council or clerk shall apply

with equal force to the county clerk. Wherever the terms "city treasury" or "municipal treasury" shall appear in this act, they shall be and are hereby defined as including the county treasury, and are hereby expressly declared to be interchangeable with any or either of these terms. Wherever the terms "treasurer" or "city treasurer" shall appear in this act, they shall be and are hereby defined as including the county treasurer of a county, and are hereby expressly declared to be interchangeable therewith; and all of the provisions of this act extending authority to or imposing duties or obligations upon the treasurer or city treasurer shall apply with equal force to the county treasurer. Wherever the terms "mayor" or "mayor of said city" shall appear in this act, they shall be and are hereby defined as including the chairman of the board of supervisors of a county, and are expressly declared to be interchangeable therewith; and all of the provisions of this act extending authority to or imposing duties or obligations upon the mayor or mayor of said city shall apply with equal force to the chairman of the board of supervisors. [New section, Statutes 1913, p. 353.]

County street superintendent. Compensation.

Sec. 58. The board of supervisors of any county in which it is desired to perform work under the provisions of this act shall be and they are hereby authorized to appoint a person to be known as the street superintendent of the said county who shall have all of the authority to perform all of the duties and obligations herein imposed upon the street superintendent, and shall be considered as designated wherever the words "street superintendent" or "superintendent of streets" are used in this act; and the board of supervisors may appoint as many deputies for the said street superintendent of the county as in their judgment may be proper and necessary, the said street superintendent to receive a compensation of six dollars per day and his deputies to receive a compensation of four dollars per day for their time actually expended. The office of the street superintendent shall be the office of the county surveyor, and, at any time when no work is actually being conducted under the provisions of this act, or when the street superintendent shall not be in his office, the county surveyor shall have charge of the records in the street superintendent's office and perform such duties as are herein imposed upon the street superintendent, and have such other authority as is herein granted to the street superintendent; and all of the provisions of this act extending authority to or imposing duties or obligations upon the street superintendent or superintendent of streets shall apply with equal force to the superintendent of streets appointed by the board of supervisors. [New section, Statutes 1913, p. 354.]

Phraseology of bonds changed.

Sec. 59. In any bonds provided to be issued under the terms of this act, the phraseology of the said bonds shall be changed to conform to

the designation of a county instead of city, and the officers hereinbefore mentioned on the part of the county shall be and they are hereby authorized to perform all of the duties herein by the provisions of this act or the provisions of the said bond specified to be performed. [New section, Statutes 1913, p. 354.]

Payment from general fund.

Sec. 60. If the board of supervisors shall determine that the whole or any part of the cost and expenses of the work mentioned in this act shall be paid out of the treasury of the county, such payment, or any part of the same, may be made from the general fund of the county or general road fund of the county, or from the road district fund of the road district in which the said improvement shall be constructed. [New section, Statutes 1913, p. 355.]

Highway lighting system. Ordinance to describe district. Tax for maintenance.

Sec. 61. If any public highway lighting system shall be installed under the provisions of this act, the board of supervisors may, by ordinance, provide, at any time before, after or during the proceedings under this act, that the cost of maintaining the said public highway lighting system, including the cost of necessary repairs, replacements, fuel, current, care and other items of like nature, shall be paid, either partly or wholly, by the district upon which the assessment shall be levied to pay the cost of the installation of the same. The ordinance shall contain a description of the district to be assessed to pay for the installation of the said lighting system and to be assessed to pay for the maintenance thereof, and also shall contain a designation or name of the said district by which it may be referred to in all subsequent proceedings, and a copy of the said ordinance shall be filed in the office of the county assessor. The county assessor shall thereafter, in making up the assessment roll, segregate the property included within the district described in the said ordinance on the assessment roll under the designation contained in the said ordinance. The board of supervisors shall thereafter, in each year prior to the time of fixing the county tax rate, estimate the cost of maintaining the said public highway lighting system during the ensuing year, and shall decide whether or not the cost of the same shall be borne wholly or partially by the said assessment district, and shall, in addition to all other taxes, fix a special tax rate for the property within said assessment district sufficient to raise an amount of money to cover all of the portion of the expense of maintaining the said public highway lighting system to be borne by said district as the board of supervisors may determine. [New section, Statutes 1913, p. 355.]

Names for roads.

Sec. 62. The board of supervisors of any county are hereby authorized by ordinance to adopt a name for any road, highway, avenue or

other public way in the county for which a name has not been provided under the provisions of section 2636 of the Political Code, and are hereby authorized by ordinance to establish the official grade of any road, highway, avenue or other public way in the county for which no official grade has theretofore been established by ordinance. [New section, Statutes 1913, p. 355.]

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STREET IMPROVEMENT BOND ACT OF 1893.

An act to provide a system of street improvement bonds to represent certain assessments for the cost of street work and improvements within municipalities, and also for the payment of such bonds.

(Approved February 27, 1893. Statutes 1893, p. 33.)

(Amended Statutes 1899, p. 40; Statutes 1911, p. 1201; Statutes 1913, pp. 351, 845; Statutes 1917, p. 160; and Statutes 1921, p. 556.)

Defining "street work act."

Sec. 1. Wherever in this act the phrase "street work act" is used, it means and shall be taken to mean, the act entitled "An act to provide for work upon streets, lanes, alleys, courts, places, and sidewalks, and for construction of sewers within municipalities," approved March 18, 1885, and all acts amendatory thereof or supplemental thereto; and wherever in this act the name of any municipal body or officer is used, or any word or phrase is used which is not herein expressly defined, it means and shall be taken to mean such municipal body or officer, or word or phrase, as the same is expressly defined in said street work act, and in all acts amendatory thereof or supplementary thereto.

Authority of City Council—Bond detail.

Sec. 2. The city council of any municipality in this state shall have the power, in its discretion, to determine that serial bonds shall be issued in the manner and form hereinafter provided to represent assessments of twenty-five dollars or more for the cost of any work or improvement authorized by the said street work act. Said serial bonds shall extend over a period not to exceed fifteen years from the second day of January next succeeding the issuance of said bonds, and an even annual proportion of the principal sum thereof shall be payable by coupon on the second day of January every year after their date until the whole is paid; provided, that if the period over which said bonds are to extend exceeds ten years, one tenth part of the principal sum thereof shall be payable by coupon on the second day of January of each of the last ten years of said period. The interest on said bonds shall be payable semi-annually by coupon on the second days of January and July, respectively, of each year, at the rate of not to exceed ten per cent per annum on all sums unpaid, until the whole of said principal and interest is paid. Said bonds and interest thereon shall be paid at the office of the city treasurer of said municipality, who shall keep a fund designated by the name of said bonds, into which he shall receive all sums paid him for the principal of said bonds and the interest thereon, and from which he shall disburse such sums upon the presentation of said coupons; and under no circumstances shall said bonds or the interest thereon be paid out of any other fund. Said city treasurer shall keep a register in his office which shall show the series, number, date, amount, rate of interest, payee and indorsee of each bond, and the

number and amount of each coupon of principal or interest paid by him, and shall cancel and file each coupon so paid. (Amended, Statutes 1913, p. 846.)

Resolution of intention.

Sec. 3. When said city council shall determine that serial bonds shall be issued to represent the expenses of any proposed work or improvement under said street work act, it shall so declare in the resolution of intention to do said work, and shall specify the rate of interest which they shall bear and the period of time over which they are to extend. A like description of said bonds shall be inserted in the notice of award, and a notice that a bond will issue to represent each assessment of twenty-five dollars or more remaining unpaid for thirty days after the date of the warrant, or such further time as may be thereafter granted by way of an extension, or five days after the decision of the city council upon an appeal, or thirty days after the recording of a reassessment in the event that one be made, and describing the bonds, shall be included in the warrant provided for in section nine of said street work act. (Amended, Statutes 1913, p. 846.)

Unpaid assessments. Form of bond.

Sec. 4. After the full expiration of thirty days from the date of the warrant, or if an appeal to be taken to the city council, or an extension of time be granted the contractor in which to make his return as provided in section ten of said street work act, then five days after the final decision of said city council, or the expiration of the extension, or after the full expiration of thirty days from the recording of a reassessment in the event that such be made, and after the street superintendent shall have recorded the return, and in the event that a reassessment is ordered, after all previous payments have been credited on the reassessment, the street superintendent shall make and certify to the city treasurer a complete list of all assessments unpaid, which amount to twenty-five dollars or over upon any assessment or diagram number; and said treasurer shall thereupon make out, sign and issue to the contractor, or his assigns, payee of the warrant and assessment, a separate bond, representing upon each lot or parcel of land upon said list the total amount of the assessments, or reassessments as the case may be, against the same as thereon shown. And if said lot or parcel of land is described upon said assessment and diagram by its number or block, or both, upon the official map of said municipality, or upon any map on file in the office of the county recorder of the county in which said municipality is situated, then it shall be in said bond a sufficient description of said lot or parcel of land to designate it by said number or block, or both, as it appears on said official or recorded map. Said bond shall be substantially in the following form:

STREET IMPROVEMENT BOND

Series (designating it) in the city (or other form of municipality) of (naming it).

\$.....

No.....

Under and by virtue of an act of the legislature of the State of California (title of said act), I, out of the fund for the above designated street improve-

ment bonds, series, will pay to, or order, the sum ofdollars (\$), with interest at the rate of . . . per cent per annum, all as hereinafter specified, and at the office of the treasurer of theof.....State of California.

This bond is issued to represent the cost of certain street work uponin the..... of....., as the same is more fully described in assessment No....., issued by the street superintendent of said, after acceptance of said work, and recorded in his office (or if there has been a reassessment then the reference shall be to such reassessment). Its amount is the amount assessed in said assessment (or reassessment if such be made) against the lot or parcel of land numbered therein, and in the diagram attached thereto, as No....., and which now remains unpaid, but until paid, with accrued interest, is a first lien upon the property affected thereby, as the same is described herein, and in said recorded assessment with its diagram, to wit:

That certain lot or parcel of land in said.....of....., county ofand State of California, described as follows:

This bond is payable exclusively from said fund and neither the municipality nor any officer thereof is to be holden for payment otherwise for its principal or interest. The term of this bond is.....years from the second day of January next succeeding its date, and at the expiration of said time the whole sum then unpaid shall be due and payable; but on the second day of January of each year after its date an even annual proportion of its whole amount is due and payable upon presentation of the coupon therefor until the whole is paid (or if said bonds are to extend over a period exceeding ten years from their date, insert in place of the last statement the following: But on the second day of January of each of the last ten years of the term of this bond an even one-tenth part of the whole amount of the principal of said bond shall be due and payable upon presentation of the coupon therefor,) with all accrued interest at the rate of.....per centum per annum. The interest is payable semi-annually, to wit: on the second days of January and July in each year hereafter, upon presentation of the coupons therefor, the first of which is for the interest from date to the next second day of.....and thereafter the interest coupons are for semi-annual interest. Should default be made in the annual payment upon the principal, or in any payment of interest, by the owner of said lot or parcel of land, or any one in his behalf, the holder of this bond is entitled to declare the whole unpaid amount to be due and payable and to have said lot or parcel of land advertised and sold forthwith, in the manner provided by law.

At said.....of....., this.....day of.....in the year one thousand nine hundred.....

.....
City treasurer of the.....of.....

In case the amount of the unpaid assessment or reassessment upon any lot or parcel of land shall be less than twenty-five dollars, then the same shall be collected as is provided in said street work act. If any person, or his authorized agent, shall at any time before the issuance of the bond for said

assessment or reassessment upon his lot or parcel of land present to the city treasurer his affidavit made before a competent officer, that he is the owner of a lot or parcel of land in said list, accompanied by the certificate of a searcher of records that he is such owner of record, and shall with such affidavit and certificate notify said treasurer in writing that he desires no bond to be issued for the assessment upon said lot or parcel of land, then no such bond shall be issued therefor and the payee of the warrant, or his assigns, shall retain his right for enforcing collection of said assessment or reassessment as if said lot or parcel of land had not been so listed by the street superintendent. The bonds so issued by said treasurer shall be payable to the party to whom they issue, or order, and shall be serial bonds, as is hereinbefore described, and shall bear interest at the rate specified in the resolution of intention to do said work. They shall have annual coupons attached thereto, payable in annual order on the second day of January in each year after the date of the bonds until all are paid, or if the term of said bonds be more than ten years, then said coupons shall be payable on the second day of January of each of the last ten years of the term of the bonds; and each coupon shall be for an even annual proportion of the principal of the bond. They shall have semi-annual interest coupons thereto attached, the first of which shall be payable upon the second day of January or July, as the case may be, next after its date, and shall be for the interest accrued at that time, and the rest of which shall be for the semi-annual interest accruing from the second day of January or July, as the case may be. The owner of, or any person interested in, any lot or parcel of land upon which a bond has been issued, under the terms of this act, may at any time pay off such bond and discharge his land from the lien of the assessment, by paying to the city treasurer for the holder of such bond the amount then unpaid on the principal sum thereof, and all interest thereon which has accrued and is unpaid, together with the semi-annual installment of interest which will next become due thereafter, and in addition thereto, interest for six months at the rate specified in the bond upon the unpaid amount of the principal. The treasurer shall thereupon make an entry upon his bond register that such bond has been paid in full. When all the coupons of principal and interest are paid or the bond is surrendered or satisfied, the city treasurer shall report the fact to the street superintendent, who shall forthwith indorse the same on the margin of the record of the assessment to the credit of which the same is paid. The assessment upon which a bond is issued shall be a first lien upon the property affected thereby until the bond issued for the payment thereof and the accrued interest thereon shall be fully paid. Said bonds by their issuance shall be conclusive evidence of the regularity of all proceedings leading up thereto under said street work act and under this act, and of the validity of said lien. (Amended, Statutes 1917, p. 160.)

Statute of Limitations.

Notwithstanding Section 4 provides that the assessment shall be a first lien until the bonds issued shall be fully paid, a proceeding to

compel the city treasurer to sell the property is barred by the statute of limitations where more than six years has elapsed between the maturity of the bonds and making the demand. *Woods v. Hyde*, 64 Cal. App. 433.

Procedure on delinquency. Notice of sale. Redemption. Deed.

Sec. 5. Whenever payment either upon the principal, or of the interest upon any bond issued hereunder has not been, or shall not be made when the

same has become, or shall become due, and the holder of the bond demands in writing that the city treasurer proceed to advertise and sell the lot or parcel of land described in said bond as being that upon which the assessment represented by said bond was levied, then said treasurer shall proceed as follows:

Subd. a. He shall publish for two (2) weeks in a newspaper of general circulation, published in the city in which said bond was issued, or if no newspaper is published in said city, then in some newspaper having general circulation therein, a notice which shall be substantially (filling in all blanks) as indicated following, to wit:

"Notice of sale of property delinquent for nonpayment of bond No..... series No....., issued for the improvement of....."

Default having been made in the payment of the following named coupons (here fill in date and amounts of the coupon or coupons which have not been paid) and the holder of said bond having demanded in writing that the city treasurer of the city of....., proceed to advertise and sell the lot or parcel of land mentioned in the said bond.

Now, therefore, I give notice that I will on the.....day of....., 19....., at the hour of.....o'clock....m. of said day, sell at public auction the lot or parcel of land mentioned in said bond, or so much thereof as may be necessary at (here state the place of sale, which shall be at the office of said treasurer or at some public place in said city) unless the amount due on said bond and the accrued interest thereon together with the cost of the publication of this notice are paid; and that I will so sell the same to the person who will take the least amount of said lot or parcel of land and pay a full amount of unpaid principal and interest on said bond, together with costs of publication. The lot or parcel of land mentioned in said bond and to be sold, is more particularly described, to wit: (here set forth the description of the lot or parcel of land as contained in the bond). The amount due on said bond up to the date of this notice is as follows: Due on the principal thereof,dollars; due on account of interest,dollars. (Here set forth the interest calculated up to the day on which the notice is dated at the interest rate named in said bond upon the unpaid principal for the full period for which no interest has been paid.) Total amount due on said bond: (here set forth the total of the foregoing items):

In order to avoid this sale, payment of the total amount above named will be required together with the cost of publications made before such payment and the additional interest accruing up to the date of payment;

In the event of sale, such sale will include interest in addition to the above total amount due accruing up to date of sale, the cost of publication of notice of sale, and one dollar for the issuing of certificate of sale. The..... (here naming newspaper) is designated as the newspaper in which this notice shall be published.

Dated.....

Treasurer of the city of....."

The day named in the notice shall not be less than fifteen (15) days from the date of the first publication of the notice;

Subd. b. An affidavit of the publisher of the newspaper in which the notice was published, or of someone in behalf of said publisher, setting forth a copy of the publication and stating that the publication was made in the said newspaper on specified dates shall be filed with the city treasurer and shall be primary evidence of the due publication of the notice;

Subd. c. The city treasurer shall collect the sum of one dollar (\$1.00), as hereinbefore mentioned, for the issuance of the certificate of sale, which sum shall belong to, and be subject to the disposition of the city.

Subd. d. Any person interested in the lot or parcel of land described in the notice of sale may at any time prior to the sale, pay the whole amount of principal of said bond remaining unpaid, the interest up to the date of such payment, at the rate named in said bond upon such amount of said principal remaining unpaid for the whole period for which interest has not been paid, together with the cost of the publication of the notice of sale; in such event the payment being made, the bond shall be cancelled; but if such payment be not made, the sale shall be made as advertised.

Subd. e. The lot or parcel described in the bond shall be sold to the purchaser who shall take the least amount of said lot or parcel and pay all of the sums specified in the notice of sale given by the treasurer. In the event that through error or otherwise the total amount for which said sale shall be made is less than that which may be required by the provisions hereof, and the holder of the bond is the purchaser at the sale and elects to accept the certificate of sale hereinafter mentioned, or if he accepts from the treasurer such sum derived from said sale made to some other purchaser, then the fact that the sale may have been made for less than the amounts specified herein shall not effect or invalidate the sale, and such receipt of said certificate or said sum shall be a waiver on the part of the holder of said bond, and the said deficient amount of sale shall be the amount upon which redemption from the sale shall be calculated to all effects the same as if the sale had been made for the full amount authorized hereby.

Subd. f. The city treasurer, before delivering any certificate, must, in a book kept in his office for that purpose, enter the date, number, and series of the bond, a description of the land sold corresponding with the description of the certificate, the date of sale, purchasers' name, the amount paid, regularly number the descriptions on the margin of the book, and put a corresponding number on each certificate. Such book must be open to public inspection during office hours when not in actual use, and he shall enter on the record of the bond the words "canceled by sale of property," giving the date of such sale;

Subd. g. Immediately on the sale, the purchaser shall become vested with a lien on the property, so sold to him, to the extent of his bid, and is only divested of such lien by the payment to the city treasurer of the purchase money, including costs herein provided for, with interest thereon at the rate of one per cent per month from the date of sale;

Subd. h. A redemption of the property sold may be made by the owner of the property, or any party in interest, within twelve months from the date of purchase, or at any time prior to the application for a deed, as hereinafter provided;

Subd. i. Redemption must be made in lawful money of the United States, and when made to the city treasurer he must mark the word "redeemed," the date and by whom redeemed on the margin of the book where the entry of the certificate is made, and credit the amount paid to the purchaser named in the certificate, and pay the same to such purchaser, or his assignee, upon the surrender of the certificate of sale, and upon satisfactory proof of an assignment thereof, if any;

Subd. j. If the property is not redeemed within the time allowed by subdivision h hereof for its redemption, the city treasurer, or his successor in office, upon application of the purchaser or his assignee, must make to said purchaser, or his assignee a deed to the property, reciting in the deed, substantially, the matter contained in the certificate, and that no person has redeemed the property during the time allowed for its redemption; the treasurer shall be entitled to receive from the purchaser two dollars for making said deed, which shall be deposited in the city treasury for the use of the city after payment has been made therefrom for the acknowledgment of said deed; provided, however, that the purchaser of the property, or his assignee must, thirty days prior to the expiration of the time of the redemption, or thirty days before his application for a deed, serve upon the owner or agent of the property purchased, if named in such certificate, and upon the party occupying the property, if the property is occupied, a written notice, stating that said property or a portion thereof, has been sold to satisfy the bond lien, the date of sale, the date number, and series of the bond, the amount then due, and the time when the right of redemption will expire, or when the purchaser will apply for a deed, and the owner of the property shall have the right of redemption indefinitely, until such notice shall have been given and said deed applied for, upon the payment of the fees, penalties and costs in this act required. In case of unoccupied property, a similar notice must be posted in a conspicuous place upon the property at least thirty days before the expiration of the time for redemption, or thirty days before the purchaser applies for a deed; and no deed to the property sold, in accordance with the provisions of this act, shall be issued by the city treasurer to the purchaser of such property, until such purchaser shall have filed with such treasurer an affidavit showing that the notice hereinbefore required to be given has been given as herein required, which said affidavit shall be filed and preserved by the said treasurer as other records kept by him in his office. Such purchaser shall be entitled to receive the sum of fifty cents for his service of such notice and the making of said affidavit, which sum of fifty cents shall be paid by the redemptioner at the time and in the same manner as the other sums, costs and fees are paid;

Subd. k. The deed, when duly acknowledged or proved, is primary evidence of the regularity of all proceedings theretofore had, and conveys to the grantee the absolute title of the lands described therein, as of the date of the

expiration of the period for redemption, free of all encumbrances, except the lien for state, county and municipal taxes;

Subd. 1. In the event of the non-payment of any installment of the interest or principal and by way of a separate, distinct and cumulative remedy, the holder of any bond upon which any payment either upon the principal or of the interest has not, or shall not be made when due, may file and maintain a suit to foreclose the lien of the bond in the same manner provided in the "act to provide for work upon streets, lanes, alleys, courts, places and sidewalks, and for the construction of sewers in municipalities," approved March 18, 1885, as amended. The complaint in such suit shall be sufficient if a true copy of the bond be therein set forth and true allegations made regarding the payments made upon the principal and interest thereon, and such suit shall be brought in the superior court within whose jurisdiction the city is by which the said bond has been issued and in case the owner of the lot, or parcel of land covered by said bond, cannot with due diligence be found, the service of such action may be had in the manner prescribed in the codes and laws of this state. The said bond, together with proof either orally by the said treasurer of the said city or by a certificate signed by him showing the non-payment of any of the principal or interest upon said bond, shall be prima facie evidence of the right of the plaintiff to recover in said action. The court in which said suit shall be commenced shall have the power to adjudge and decree a lien against the lot or parcel of land covered by said bond and to order said premises to be sold on execution as in other cases of the sale of real estate by the process of said court, and the amount of interest due shall be calculated in the same manner hereinbefore set forth in subdivision a hereof, up to the date of the signing of the judgment. On appeal, the appellate courts shall have the same power to adjudge and decree a lien and to order such premises to be sold on execution of decree as is conferred on the court from which an appeal is taken. The court shall also fix and allow a reasonable attorney's fee for the prosecution of said suit where personal demand for payment has been made before the institution of suit. Such premises, if sold, may be redeemed as in other cases. Such action shall be governed and regulated by the provisions hereof, and also when not in conflict herewith by the codes of this state. (Amended, Statutes 1921, p. 556.)

Provisions as to railroad tracks. Failure to perform work.

Sec. 6. Whenever any railroad track or tracks of any description exist upon any street or streets on which the city council has ordered work to be done or improvements made, excepting therefrom such portions as are required by law to be kept in order or repair by any person or company having railroad tracks thereon, the said council may, at any time thereafter, order such person or company to perform upon said excepted portion the work or improvements, similar in all respects to that already ordered to be performed under the same specifications and superintendence, with the same materials, within the same time, and to the like satisfaction and acceptance. Thereupon it shall be the duty of the clerk of said council to deliver immediately a copy of such order, certified by him, to such person or company, and to make and preserve in his office a certificate of such delivery, its date, and

upon whom made. Should such person or company, for thirty days, or within such extension of time as the city council may grant, thereafter refuse or neglect to make or have made such work or improvement in the manner or time ordered, it shall be the duty of the city council to have such work or improvement performed, and such refusal or neglect punished in the manner provided by law. Within fifteen days after receiving the certified copy of said order, such person or company may file with the clerk or said council a written assumption of the performance of said work or improvement, according to the order, or a request to the council to have such work or improvement performed, for and at the expense of such person or company, in the manner herein provided. The failure to file such instrument within said time shall be taken and deemed to be a refusal to comply with the order. Upon reception of said assumption of the direct performance of said work or improvement, the city council shall take no further proceedings in the matter, unless such person or company neglects or fails for thirty days, or such further time as the council may grant, to comply with the provisions of the order. But if such person or company files the said request that the said council have such work or improvement performed, or fails to perform said work within thirty days, or within such further time as the council may grant, then said city council may pass an ordinance of intention to perform said work, which ordinance shall specify the work to be performed, and a statement that unless within thirty days after the recording of the return of the warrant, or within five days after the final decision of the council on an appeal, the said person or company shall pay the cost of said work, or the street superintendent of said city shall issue bonds to represent the cost of said work, stating also that the cost of said work, in case bonds shall issue, shall be paid in ten yearly installments, and also the rate of interest (not to exceed ten per cent per annum) that the same shall bear. The subsequent procedure shall be as provided by the "street work act." A similar statement shall also be incorporated in all notices required to be posted or published by the provisions of the "street work act"; also in the ordinance or resolution ordering the work, advertisement for proposals, and in the contract. Whenever the person or company owning any such railroad shall not have, within thirty days after the recording of the return of the warrant, or within five days after the final decision of the council on an appeal, paid the cost of such work, the street superintendent shall issue to the contractor, or to his assigns, bonds for the amount of such cost, which shall describe the franchise, tracks, and roadbed along or between which said work has been performed, and describing the same as upon the assessment and diagram, giving its assessment number. Such bonds shall also describe the work performed, giving the total amount of the cost of such work, the name of the owner of said railroad, the number of installments in which the cost of the work is to be paid, and the rate of interest which the deferred payments shall bear. Said bonds shall be in sums of not less than one hundred dollars or more than one thousand dollars and shall recite that the total amount of the cost of such work, together with the interest thereon, as represented in said bonds, is, except state, county, and municipal taxes, a first lien upon all the track, roadbed, switches, and franchises of said railroad lying within the

corporate limits of the city or town, on any part of which said work has been performed. Said street superintendent shall also keep a record of such bonds, as required by section 18 of the "street work act." Whenever bonds have been issued, as herein provided, the same, together with the cost of such work and the interest thereon, shall be, except state, county, or municipal taxes, a first lien upon all the tracks, roadbed, switches, and franchises of said railroad within the corporate limits of the city or town, on any part of which said work has been performed. Sections 4 and 5 of this act, regarding the form, issuance, and foreclosure of street bonds and the sale of property described therein, shall apply thereto, except that the work required to be performed by the treasurer by said sections shall be performed by the street superintendent, in so far as the bonds for the paving of railroads are concerned. None of the provisions of the "street work act" in regard to a protest against the work shall apply to any work contemplated in this section. All provisions of the "street work act" not inconsistent with the provisions hereof shall apply hereto.

Defining "City Treasurer."

Sec. 7. The term "city treasurer," as used in this act, shall be held to mean and include any person who, under whatever name or title, is the custodian of the funds of the municipality.

Repeal of Act of 1891.

Sec. 8. The act entitled "An act to amend an act entitled 'An act to provide for work upon streets, lanes, alleys, courts, places, and sidewalks, and for construction of sewers within municipalities,' approved March 18, 1885, by adding thereto an additional part, numbered 4, consisting of sections 38, 39, 41, 42, 43, and 44, relative to a system of street improvement bonds," approved March 17, 1891, is hereby repealed, except as to any and all proceedings hitherto commenced thereunder, which proceedings may be completed and have full force as is therein provided.

Time when act takes effect.

Sec. 9. This act shall take effect and become of force from and after its passage.

Public work in unincorporated territory. Definition of terms.

Sec. 10. The public work provided to be done under the act may be performed under the provisions of this act in unincorporated territory in counties, and all of the provisions of this act shall apply with equal force to such work subject to the definitions and modifications hereinafter contained. Wherever the words "municipality," "municipalities" or "city" shall appear in this act, they shall be and are hereby defined as including cities, cities and counties and counties and are hereby expressly declared to be interchangeable with any or either of these terms. Wherever the terms "city council" or "council" shall appear in this act, they shall be and are hereby defined as including the board of supervisors of a county, and are hereby expressly declared to be interchangeable with these terms; and all of the provisions of this act extending authority to or imposing duties or obliga-

tions upon the city council or council shall apply with equal force to the board of supervisors. Wherever the terms "street" or "streets" shall appear in this act, they shall be and are hereby defined as including highway, or highways, and are hereby expressly declared to be interchangeable therewith; and all of the provisions of this act relating to street or streets shall apply with equal force to highway or highways. Wherever the terms "city clerk," "clerk of the city council," "clerk of the council" or "clerk" shall appear in this act, they shall be and are hereby defined as including the county clerk of a county, and are hereby expressly declared to be interchangeable therewith; and all of the provisions of this act extending authority to or imposing duties or obligations upon the city clerk, clerk of the city council, clerk of the council or clerk shall apply with equal force to the county clerk. Wherever the terms "city treasury" or "municipal treasury" shall appear in this act, they shall be and are hereby defined as including the county treasury, and are hereby expressly declared to be interchangeable with any or either of these terms. Wherever the terms "treasurer" or "city treasurer" shall appear in this act, they shall be and are hereby defined as including the county treasurer of a county, and are hereby expressly declared to be interchangeable therewith; and all of the provisions of this act extending authority to or imposing duties or obligations upon the treasurer or city treasurer shall apply with equal force to the county treasurer. Wherever the term "corporate limits" shall appear in this act, it shall be and is hereby defined as including the county boundary; and is hereby expressly declared to be interchangeable therewith; and all of the provisions of this act referring to corporate limits shall apply with equal force to the county boundary. (Added, Statutes 1913, p. 351.)

County street superintendent. Appointment and compensation.

Sec. 11. The board of supervisors of any county in which it is desired to perform work under the provisions of this act shall be and they are hereby authorized to appoint a person to be known as the street superintendent of the said county who shall have all of the authority and perform all of the duties and obligations herein imposed upon the street superintendent, and shall be considered as designated wherever the words "street superintendent of streets" are used in this act; and the board of supervisors may appoint as many deputies for the said street superintendent of the county as in their judgment may be proper and necessary, the said street superintendent to receive a compensation of six dollars per day, and his deputies to receive a compensation of four dollars per day for their time actually expended. The office of the street superintendent shall be the office of the county surveyor, and, at any time when no work is actually being conducted under the provisions of this act, or when the street superintendent shall not be in his office, the county surveyor shall have charge of the records in the street superintendent's office and perform such duties as are herein imposed upon the street superintendent, and have such other authority as is herein granted to the street superintendent; and all of the provisions of this act extending authority to or imposing duties or obligations upon the street superintendent or super-

intendent of streets shall apply with equal force to the superintendent of streets appointed by the board of supervisors. (Added, Statutes 1913, p. 352.)

Phraseology of bonds to be changed to conform to county.

Sec. 12. In any bonds provided to be issued under the terms of this act, the phraseology of the said bonds shall be changed to conform to the designation of a county instead of city, and the officers hereinbefore mentioned on the part of the county shall be and they are hereby authorized to perform all of the duties herein by the provisions of this act or the provisions of the said bond specified to be performed. (Added, Statutes 1913, p. 352.)

Payments by county to be made from certain funds.

Sec. 13. If the board of supervisors shall determine that the whole or any part of the cost and expenses of the work mentioned in this act shall be paid out of the treasury of the county, such payment, or any part of same, may be made from the general fund of the county or general road fund of the county, or from the road district fund of the road district in which the said improvement shall be constructed. (Added, Statutes 1913, p. 352.)

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STREET IMPROVEMENT ACT OF 1913

An act to provide for the establishment and change of grade of public streets, lanes, alleys, courts, places and rights of way, and of any of the following avenues of public travel, namely, tunnels, subways, viaducts, bridges or independent subterranean ways in municipalities and providing for the construction or improvement thereof, in cases where any damage to private property would result from such improvement, and for the assessment of the costs, damages and expenses thereof upon the property benefited thereby, and to provide a system of local improvement bonds to represent the assessments for the costs, damages and expenses of such improvement, and for the payment and effect of such bonds. (Title amended Statutes 1917, p. 971.)

(Approved June 16, 1913, Statutes 1913, p. 954.)

(Amended Statutes 1915, p. 1217; 1917, p. 970; 1921, p. 267, 339; 1925, Chap. 269.)

City may improve streets.

Sec. 1. Whenever the public interest or convenience may require, the legislative body of any city is hereby empowered to establish or change or modify the grade of any public street, avenue, lane, alley, court, place or right of way in said city, or any portion thereof, and also the grade of the roadway of any of the following avenues of public travel, namely, tunnels, subways, viaducts, bridges or independent subterranean ways, in, on, under, over or through any public street, avenue, lane, alley, court, place or other land of the city, or in, on, under, over or through any land in which and where the city may then have an easement or right of way therefor; and in any case when or where, in the opinion of said legislative body, any damage to private property would result from the improvement thereof, to order the whole or any part, either in length or width, of such public street, avenue, lane, alley, court, place or right of way or other land of the city, in which and where the city may then have an easement or right of way therefor, to be improved to conform to such official grade by grading or regrading, paving or repaving, planking or replanking, macadamizing or remacadamizing, piling or repiling, capping or recapping, graveling or regraveling, oiling or reoiling, sewerage or resewering, sidewalking or residewalking, curbing or recurbing, guttering or reguttering, or by the construction, reconstruction or repair of manholes, culverts, cesspools, conduits, crosswalks, steps, parking or parkways, or by the construction, reconstruction or repair of poles, posts, wires, conduits, lamps and other appurtenances for the lighting thereof; and also in any case where, in the opinion of said legislative body, any damage to private property would result from the construction, reconstruction or repair thereof, to order the construction, reconstruction or repair of any of the following avenues of public travel, namely, tunnels, subways, viaducts, bridges or independent subterranean ways, together with approaches thereto, and all appurtenances therefor, in, on, under, over or through any public street, avenue, lane, alley, court, place or other land of

the city, or in, on, under, over or through any land in which and where the city has an easement or right of way therefor, to the grade established for the roadway of such tunnel, subway, viaduct, bridge or independent subterranean way, and order the construction, reconstruction or repair of stormwater ditches or tunnels, or breakwaters, levees or walls of rock, or other materials, culverts, manholes, cesspools, conduits, subways, retaining walls, sewers, ditches, drains and channels for sanitary and drainage purposes, or either or both thereof, with necessary outlets, catch-basins, flush-tanks, septic tanks, connecting sewers and other appurtenances, to protect the streets, avenues, lanes, alleys, courts, places or rights of way, or any of the following avenues of public travel, namely, tunnels, subways, viaducts, bridges or independent subterranean ways which may be constructed as hereinabove provided, from overflow or injury by water or otherwise; and to order the doing of any other work which shall be necessary to improve the whole, or any portion of such street, avenue, lane, alley, court, place or other land of the city, or any of the following avenues of public travel, namely, tunnels, subways, viaducts, bridges or independent subterranean ways which may have been constructed, or which shall be constructed, under the proceedings provided in this act. This act shall apply equally in cases where the official grade of any public street, avenue, lane, alley, court, place or right of way, or of the roadway of any of the following avenues of public travel, namely, tunnels, subways, viaducts, bridges or independent subterranean ways, in, on, under, over or through any public street, avenue, lane, alley, court, place or other land of the city, or in, on, under, over or through any land in which and where the city may then have an easement or right of way therefor has previously been established or changed, and where such grade is established, modified or changed in whole or in part by the same proceedings by which the improvement is ordered, if in the opinion of the legislative body of the city, damage will result to private property from the making of the improvement contemplated by the proceedings. (As amended Statutes 1917, p. 971.)

Resolution of intention. Boundaries of district.

Sec. 2. Before ordering any establishment, change or modification of grade, or any improvement described in section one hereof, the said legislative body shall pass an ordinance or resolution, declaring its intention so to do, and that, in its opinion, damage to private property would result from such improvement, designating the proposed grade, describing the proposed improvement, fixing the time and place for the hearing of protests in relation thereto by said legislative body, which shall be not less than thirty days from the date of the passage of said ordinance or resolution of intention, and specifying the exterior boundaries of the district of land to be benefited by said improvement, and to be specially assessed to pay the costs and expenses thereof, and the damages caused by said improvement, which shall be known as the assessment district.

Such legislative body may include in one improvement, under one ordinance or resolution of intention and order and under one contract, the grade of all or any portion of one or more streets, avenues, lanes, alleys, courts,

places, rights of way or other land of the city, or land in which and where the city has an easement or right of way, established, changes, or modified, and the grade of the roadway of any of the following avenues of public travel, namely tunnels, subways, viaducts, bridges, or independent subterranean ways, in, on, under, over or through any portion of any of said streets, avenues, lanes, alleys, courts, places, right of way or other land of the city, or land in which and where the city has an easement or right of way, established, changed or modified, and the construction of any one or more or all of the different kinds of work enumerated in section one hereof, upon the same or any part or portion thereof, and may exclude therefrom any of such work already done. *Provided, however,* that when the work proposed to be done is the construction or reconstruction of sewers for sanitary or drainage purposes, or either or both thereof, the council shall have power in the resolution or ordinance to declare its intention to do said work according to some one of two or more plans or methods or with some one of two or more kinds of material or mixtures and to adopt plans and specifications for the doing of said work according to such alternative plans or methods or with such alternative kinds of materials or mixtures. In the event the council shall so declare in its resolution or ordinance, then the council shall upon the hearing provided for in sections two and four hereof, determine that said work shall be so done, and invite proposals for the doing thereof according to such alternative method or plan or with such alternative kinds of materials or mixtures, and upon the opening of such proposals said council shall thereupon fix a time for hearing upon the proposals so received, notice of which shall be given by posting and publication for the same time and in the same manner as is provided for the notice inviting proposals the first publication of which notice shall be at least ten days before the time of hearing so fixed. At such hearing any person interested shall have the right to appear and be heard upon the question as to which method or plan or material or mixture shall be adopted for the doing of said work and as to which proposal shall be accepted. The council may thereupon in its award of contract determine not only the bidder to whom the award shall be made, but also which one of such alternative methods or plans of doing such work shall be adopted, or which of such alternative materials or mixtures shall be adopted, for the doing of said work. It shall thereupon award the contract, if an award be made, to the lowest responsible bidder for the doing of said work according to such plan or method or material or mixture so adopted, and thereupon said work shall be done in accordance with the plan or method or material or mixture so adopted. No other method or procedure provided for in this act shall govern in regard to the doing of said work. The procedure provided for in this section shall be an alternative procedure to that provided in the other sections of this act, of which this section forms a part, and the council shall be at liberty to use such procedure or not in its discretion. If the council shall not exercise its discretion to call for proposals for the doing of said work according to the alternative method as herein provided for, or plan, or such alternative materials or mixtures, then this section shall not apply to any proceeding taken under this act. It is provided further, notwithstanding any charter or other provisions of law requiring the award

of contract to be made by a public board or officer, other than the council, nevertheless, in all cases where proceedings have been taken under this section the award of contract shall be by the council and said council shall not only determine the bidder to whom the award shall be made, but also the method or plan or materials or mixtures to be adopted for the doing of such work. (Amended, Statutes 1925, Chap. 269.)

**Resolution posted, published and mailed to owners. Notice of street work.
Form of notice. Affidavit of mailing.**

Sec. 3. Said ordinance or resolution of intention shall be conspicuously posted for two days on or near the chamber door of said legislative body and published by two insertions in a daily or weekly newspaper published and circulated in said city, and designated by said legislative body for the purpose. If no such newspaper be so published and circulated in said city, such posting of said ordinance or resolution of intention shall be sufficient. The superintendent of streets shall thereupon cause to be conspicuously posted along all streets and parts of streets or other public places or rights of way, or along any land of the city or land in, on, under or over which the city has an easement or right of way where any work is to be done or improvement made, or in, on, under or over which any tunnel, subway, viaduct, bridge or independent subterranean way is to be constructed, at not more than three hundred feet apart, notices (not less than three in all) of the passage of such ordinance or resolution. Said notices shall be headed "Notice of street work" in letters not less than one inch in length, shall be in legible characters, and shall state the fact and date of the passage of said ordinance or resolution of intention, and the time and place fixed for the hearing of protests, and notify all persons interested to appear at said time and place with their objections to said improvement, if any they have, and briefly describe the proposed improvement in general terms, and refer to the ordinance or resolution of intention for further particulars. He shall also cause a notice of similar substance to be published by two insertions in a daily newspaper published and circulated in said city, or, if there be no such daily newspaper, then by two successive insertions in a weekly or semiweekly newspaper so published and circulated. If no such newspaper be so published and circulated in said city such notice shall also be posted on or near the chamber door of the legislative body of said city, and in two other public places in said city. Such posting and publication shall be completed at least ten days before the day set for the hearing of protests. The city clerk shall immediately upon the passage of said ordinance or resolution of intention mail, postage prepaid, to each property owner in the district to be assessed to pay the costs and expenses of the improvement, at his last known address as the same appears on the tax rolls of said city, or, where no address so appears, to the general delivery, a postal card, containing a notice, which shall be substantially in the following form (filling blanks):

You are hereby notified that on the.....day of....., 19.....,
the legislative body of the city of....., California, by virtue

of the street improvement act of 1913, passed an ordinance (resolution) of intention numbered....., for the improvement of.....street between.....and.....street. The time for filing protests will expire on the.....day of....., 19....., and protest will be heard on the.....day of....., 19....., at the hour of in the council chamber of said city.

Property belonging to you is within the assessment district for said improvement, and will be assessed therefor. For further information you are referred to said ordinance, and to the maps, profiles, plans and specifications on file in the office of the city engineer (or city clerk.)

.....
City Clerk.

If any lots or parcels of land in the assessment district be assessed to "unknown owners" on the tax rolls of said city, no such postal cards need be mailed to the owners thereof.

The city clerk shall, upon the completion of the mailing of said postal cards, file in the office of the superintendent of streets an affidavit setting forth the time and manner of his compliance with this requirement; *provided* that the failure of the city clerk to mail said cards, or the failure of the property owners, or any of them, to receive the same, or the failure of the superintendent of streets to post the said notices of street work, or to post proper notices thereof, shall in no wise affect the validity of the proceedings or prevent the legislative body from acquiring jurisdiction to order the said improvement; *provided, however*, that the city council may require affidavits to be filed showing the posting and mailing of said notices before it adopts the ordinance or resolution ordering the improvement. (As amended Statutes 1917, p. 973.)

Objections. Hearing on protests.

Sec. 4. At or before the time fixed for the hearing, any person interested, objecting to the proposed improvement or to the extent of the assessment district described in the ordinance or resolution of intention, may file a written protest with the clerk of said legislative body. Every protest must contain a description of the property in which each signer thereof is interested and set forth the nature of his interest therein and must be accompanied by the affidavit of one of the signers thereof that each signature thereto is the genuine signature of the person whose name is thereto subscribed, and in case any signature is made by an agent, there must be attached to the protest the affidavit of the agent that he is duly authorized to sign such protest. Any protest not complying with the foregoing requirements shall not be considered by said legislative body. The clerk shall endorse on every such protest the date of its reception by him, and at the time fixed for the hearing, or at any other time to which the hearing may be adjourned, he shall present to said legislative body all protests so filed with him. Before the hearing of any protest there shall be filed with such legislative body affidavits showing that the said notices have been posted

and published as hereinbefore required, and the said legislative body shall thereupon cause to be entered in its minutes an order reciting that notice of said hearing has been posted and published as required by law, and such order shall be prima facie evidence of the truth of the facts therein recited. The legislative body shall hear said protests at said meeting, or at any time to which the hearing thereof may be continued, and pass upon the same, and its decision shall be final and conclusive; *provided, however*, if such protests are against the proposed improvement, and the legislative body finds that such protests are signed by the owners of a majority of the frontage of the property fronting on the streets or parts of streets within the assessment district for such improvements, all further proceedings shall be stayed and barred for six months from and after the filing of such majority protests, unless the owners of a majority of such frontage shall in the meantime petition for the said improvement to be made. If such protests are not signed by a majority of the owners of such property, and such protests are sustained, no further proceedings shall be had under said ordinance or resolution of intention, but a new ordinance or resolution of intention for the same improvement may be passed at any time. If such protests are denied, the proceedings shall continue as if such protests had not been made. (As amended Statutes 1915, p. 1220.)

Jurisdiction to order improvements.

Sec. 5. If no protests are filed at or before the time fixed for the hearing thereof by the ordinance or resolution of intention, or if protests are filed, and after hearing are denied, as above provided, the legislative body shall have jurisdiction to order the establishment, change or modifications of grade or other improvement described in the ordinance or resolution of intention. Having acquired such jurisdiction, it shall by ordinance or resolution order the establishment, change or modification of grade or such other improvement to be made, and refer the same to the commission hereinafter provided for, to estimate the damages caused thereby, and report an assessment of said damages, and of all costs and expenses of the improvement, on the property benefited thereby. (As amended Statutes 1917, p. 975.)

Commission to estimate damages.

Sec. 6. In any city having a board of public works created by its charter or by law, such board, and in other cities the mayor, city engineer or surveyor and superintendent of streets, or if all of such officers last mentioned do not exist in cities having no board of public works, any three competent and disinterested persons appointed by said legislative body, shall act as a commission to estimate the damages caused by said proposed improvement and to assess the same, and all costs and expenses of said proposed improvement upon the property benefited thereby. Such commissioners, if they are appointed by said legislative body as aforesaid, shall be sworn to make the assessment of benefits and damages faithfully, impartially and to the best of their ability. Said commission shall have power to subpoena witnesses to appear before it to be examined under oath, which any of said commissioners may administer.

Hearing of petitions for damages.

Sec. 7. Upon the passage of the final ordinance or resolution referred to in section five hereof, said commission shall appoint a time and place for the hearing of petitions for damages caused by said improvement, and shall cause notice of such time and place to be published for at least five days in a daily newspaper, or three times in a weekly newspaper, published in said city, or if no such newspaper is so published and circulated, then by posting for two days in three public places in said city. The time set for hearing such petitions shall be not less than thirty days from the first publication or posting of such notice. Before said hearing said commission shall view the location of the proposed improvement, and the property affected thereby. Said hearing may be continued from time to time by said commission.

Petition of owners damaged. Determination of Damages.

Sec. 8. At or before the time set for the hearing of petitions for damages any person owning property, and claiming that the same will be damaged by said proposed improvement, shall file with the superintendent of streets, who shall transmit the same to the commission, a petition showing the fact of such ownership, a description of the property claimed to be damaged, its market value, and the amount of damages which it is claimed such property will sustain by the proposed improvement, and the post office address of such petitioner, or his agent. Every such petition shall be verified by the oath of the petitioner or his agent. After considering the petitions filed as herein provided, and after hearing the petitioners who may appear, and after viewing the location of the proposed improvement and the property affected thereby, said commission shall proceed to determine the amount of damages, if any, which will be sustained by each such petitioner because of the proposed improvement. Any property owner who fails to file any such petition shall be deemed to have waived his right to a hearing with respect to any damages to any property owned by him, and to object to the amount of such damages fixed by said commission. (As amended Statutes 1915, p. 1221.)

Procedure on Bids. Application for acceptance of work. Commencement of work or abandonment by contractor. Bond of contractor. Claims of materialmen.

Sec. 9. Before the awarding of any contract by the legislative body for doing any work authorized by this act, said legislative body shall cause notice, with specifications, to be posted conspicuously for five days on or near the chamber door of said legislative body, inviting sealed proposals or bids for doing the work ordered, and shall also cause notice of said work inviting said proposal, and referring to the specifications posted or on file, to be published for two days in a daily, or weekly newspaper published and circulated in said city, designated by said legislative body for that purpose, and in case there is no newspaper published in said city, then it shall only be posted as hereinbefore provided. Every bid shall be delivered to the clerk of the legislative body and shall be accompanied by a check certi-

fied by a responsible bank, amounting to ten per cent of the amount of the bid, payable to the order of the said clerk, or by a bond for the said amount, and so payable, signed by the bidder and by two sureties who shall justify before any officer competent to administer an oath, in double the said amount, and over and above all statutory exemptions, and said amount shall be forfeited to the city in case the bidder depositing the same does not, within ten days after written notice that the contract has been awarded to him, enter into a contract with the city to do the work, with the bonds hereinafter required. Said bids shall be opened by the legislative body in public session and publicly declared, and no bid shall be considered unless accompanied by said bond or said certified check. The legislative body must let the contract to the lowest responsible bidder, who shall give bond for the faithful performance of the work in such sum as may be required by it, with sureties satisfactory to said legislative body; *provided, however*, that the legislative body may reject any and all bids, should it deem this for the public good, and also the bid of any person who has been delinquent or unfaithful in the performance of any former contract with the city, or of any other contract let by or under the authority thereof. The contract must provide that the work shall be done under the supervision of the superintendent of streets, and no work shall be paid for until it has been accepted by the legislative body. Whenever the contractor desires the work, or part thereof, to be accepted, he must make written application to that effect to the legislative body. Upon the filing of such application for acceptance, the clerk of the legislative body shall give not less than five days' notice by publication by two insertions in a daily or weekly newspaper, published and circulated in the city, or by posting for two days in three public places in the city, in case no such newspaper is published and circulated therein, that at a certain time and place, to be named in said notice, the legislative body of the city will hear and consider any objections to the acceptance of the work, or part of the work, for the acceptance of which said contractor has made such application, and only after such hearing shall any work be accepted. If upon such hearing any objections to the acceptance are made, and are sustained by the legislative body, the legislative body must require the contractor to take such steps as will remove such objections; and in the event of his failure to do so, within such time as the legislative body shall prescribe, the legislative body may relet such portion of the work, and charge the contractor the cost thereof, together with all expenses incident to said reletting, and retain the same out of any moneys due, or to become due, to him under the contract, and also hold him and his sureties responsible therefor upon his bond. The contract shall provide that the work must be commenced within twenty days after the contractor receives written notice from the superintendent of streets that there is sufficient money or bonds, or money and bonds in the special fund devoted to the proposed improvement to pay the contract price, and completed within such time as the superintendent of streets shall prescribe. If the contractor abandons the work or fails to proceed with the same as rapidly as required by his contract, the legislative body may relet the contract, or any portion thereof, and pay the cost of the same, and also any expenses incident to the reletting, out of any

funds due, or to become due the contractor, and also hold him and his sureties responsible upon his bond for such costs and expenses, and also any damages resulting from such abandonment. At the time of executing said contract the contractor shall file with the superintendent of streets a good and sufficient bond, approved by the superintendent of streets, in a sum not less than one half the total amount payable by the terms of said contract. Such bond shall be executed by the principal and at least two sureties who shall qualify for double the sum specified in said bond, and shall be made to inure to the benefit of any and all persons, companies, or corporations who performed labor on or furnished materials to be used in the said work or improvement, and shall provide that if the contractor to whom said contract was awarded fails to pay for any material so furnished for the said work, or for any work or labor done thereon of any kind that the sureties will pay the same to an amount not exceeding the sum specified in said bond. Any materialman, person, company or corporation furnishing materials to be used in the performance of said work specified in said contract or who performed work or labor upon the said improvement, whose claim has not been paid by the said contractor to whom the said contract was awarded, may, within thirty days from the time said improvement is finally accepted, file with the superintendent of streets a verified statement of his or its claim, together with a statement that the same, or some part thereof, has not been paid. At any time within ninety days after the filing of such claim the person, company or corporation filing the same, or their assigns, may commence an action on said bond for the recovery of the amount due on said claim, together with the costs incurred in said action and a reasonable attorney fee to be fixed by the court for the prosecution thereof. Upon the signing of the contract for the doing of the work the clerk of the legislative body, if there be no board of public works in said city, shall certify to such commission the amount of the contract price.

Assessment for incidental expenses. Report and contents thereof.

Sec. 10. The commission shall, as soon as practicable, after determining what damages will be caused by said improvement, and, after the signing of the contract for the work, assess the total amount of all the incidental expenses of such improvement, which shall include the necessary expenses and disbursements of the commission, the cost of making the assessment, and all expenses necessarily incurred by the city in connection with the proposed improvement for maps, diagrams, plans, surveys and other matters incident thereto, upon the respective lots or parcels of land in the assessment district described in the ordinance or resolution of intention, in proportion to the benefits to be received by such lots or parcels of land, respectively, from the said improvement, and shall make and file with the clerk of the legislative body a report in writing containing the following:

1. A schedule describing the lots or parcels of land belonging to each petitioner for damages and which will be damaged by said proposed improvement, stating the amount of damage to each lot or parcel as determined by the commission, and the name of the owner of each such lot or parcel of land so damaged.

2. A diagram showing the assessment district, and also the boundaries and dimensions of the respective lots or parcels of land within said district, and each of such lots or parcels of land shall be given a separate number in red ink upon said diagram.

3. A proposed assessment of the total amount of damages that will be caused by said improvement, as determined by the commission, the total amount of the contract price for the work and the total amount of the incidental expenses thereof as above specified, upon the respective lots or parcels of land in said district in proportion to the benefits to be received by such lots or parcels of land, respectively, from said improvement. Said assessment shall refer to such lots or parcels of land upon said diagram by the red ink numbers thereof, and need contain no other description thereof, and shall show the names of the owners, if known, otherwise designating them as unknown; but no mistake in the name of the owner of any lot or parcel of land shall affect the validity of the assessment thereon.

In case the commissioners do not all agree, a majority of the whole number may make such report.

Hearing on report.

Sec. 11. Upon the filing of the report provided for in section ten hereof, the clerk of the legislative body shall present such report to the legislative body, which shall fix a day for the hearing thereof by such legislative body, which day shall not be less than twenty days from the date of filing such report, and shall cause a notice of such hearing to be published by the clerk thereof, by three insertions in a daily newspaper published and circulated in said city, or if there be no daily newspaper in said city, then by two successive insertions in a weekly newspaper so published and circulated; or if no newspaper is so published and circulated, then by posting for two days in three public places in said city. Such publication shall be completed at least ten days before the date fixed for the hearing. Said notice shall state the fact that such report has been filed, and the date set for the hearing thereof, and require all persons interested to file with the clerk their objections, if any they have, to the confirmation of said report at or before the time fixed for the hearing.

Objections to report. Decision on report. Recording of assessment and diagram. When assessments delinquent.

Sec. 12. Any objection to said report shall be in writing signed by the objector, or his agent, and shall comply with the requirements of section four hereof for the form and substance of protests, and shall be filed with the clerk of the legislative body at or before the time fixed for the hearing. At the time fixed, or at any other time to which the hearing may be continued, the legislative body shall hear said report and any objections thereto, and any person interested may appear and be heard upon said report and objections. After such hearing the legislative body shall pass upon the report, and may confirm, modify, or correct the same, or may confirm the report as modified or corrected, or order the commission to make and file a new report which shall be heard in like manner as the first report and after like notice of hearing. If no objections are filed, or if the objections filed are not

sustained, the legislative body shall confirm the report. The action of the legislative body upon said report shall be declared by resolution entered upon its minutes, and shall be final and conclusive, except as to the damages to be caused by the proposed improvement; and when such report is confirmed, or is confirmed as modified or corrected, the clerk of the legislative body shall transmit the diagram and assessment provided for in section ten hereof, as finally confirmed, to the superintendent of streets. The superintendent of streets shall thereupon record such assessment and diagram in his office, in a suitable book to be kept for that purpose, and append thereto his certificate of the date of such recording, and such record shall be the assessment roll. From the date of such recording all persons shall be deemed to have notice of the contents of such assessment-roll. Immediately upon such recording the several assessments contained in such assessment roll shall become due and payable, and each of such assessments shall be a lien upon the property against which it is made, paramount to all other liens, except liens for state, county and municipal taxes; *provided, however*, that such lien shall be subordinate to all special assessment liens previously imposed upon the said property, but it shall have priority over all special assessment liens which may thereafter be created against the same property; and such liens shall only be discharged by payment of the assessment or by redemption of the land after sale for delinquency. The superintendent of streets shall, upon the recording of said assessment, give notice by publication for five days in a daily newspaper published and circulated in said city, or by two insertions in a weekly newspaper so published and circulated; or in case no such daily or weekly newspaper is so published and circulated in said city, then by posting such notice for four days in three public places in said city, that said assessment has been recorded in his office and that all sums assessed therein are due and payable immediately, and that payment of the said sums must be made to him within thirty days after the date of the first publication or posting, which date shall be stated in the notice. Said notice shall also contain a statement that all assessments not paid before the expiration of the said thirty days shall become delinquent, and that thereupon five per cent upon the amount of each such assessment will be added thereto. When payment of any assessment is made the superintendent of streets shall mark opposite such assessment the word "paid," the date of payment, and the name of the person by or for whom the same is paid, and shall give a receipt therefor. Upon the expiration of said period of thirty days, all assessments then unpaid shall become delinquent, and the superintendent of streets shall mark each such assessment "delinquent" on said assessment roll, and add five per cent to the amount thereof. (As amended Statutes 1921, p. 268.)

Publication of delinquent list.

Sec. 13. The superintendent of streets shall within thirty days from the date of such delinquency begin the publication of a list of the delinquent assessments, which list must contain a description of each lot or parcel of land delinquent, and opposite each description the name of the owner as stated in the assessment roll, and the amount of the assessment and costs

due, including the cost of advertisement, which cost of advertisement shall not exceed the sum of fifty cents for each parcel of land separately assessed, He shall append to and publish with said delinquent list a notice that unless each assessment delinquent, together with the penalty and costs thereon, is paid, the property upon which such assessment is a lien will be sold at public auction at a time and place to be specified in the notice. Such publication must be made by five insertions in some daily newspaper published and circulated in the city, or by two insertions in a weekly newspaper so published and circulated, or, in case no such newspaper is so published and circulated in said city, such list of delinquent assessments and notice shall be posted in three public places in said city for five days. The time of sale must not be less than five days nor more than ten days after the last publication of said list, or after the completion of such posting, as the case may be, and the place of sale must be in or in front of the office of the superintendent of streets. At any time after such delinquency and prior to the sale of any piece of property assessed and delinquent, any person may pay the assessment on such piece of property, together with the penalties and costs due thereon, including the cost of advertising, if such payment is made after the first publication of the list of delinquent assessments.

Sale of property.

Sec. 14. At the time and place fixed for the sale the superintendent of streets must commence the sale of the property advertised, commencing at the head of the list, and continuing in numerical order of lots or parcels of land until all are sold; *provided*, that he may postpone or continue the sale from day to day until all the property is sold. Each lot or parcel of land separately assessed must be offered for sale separately, and the person who will take the least quantity of land and then and there pay the amount of the assessment, penalty and costs due, including fifty cents to the superintendent of streets for a certificate of sale, shall become the purchaser. In case there is no other purchaser for any lot or parcel of land offered for sale, the same shall be struck off to the city as purchaser.

Certificate of sale. Lien vests in purchaser.

Sec. 15. After making the sale the superintendent of streets must execute in duplicate a certificate of sale setting forth a description of the property sold, the name of the owner thereof as given in the assessment roll, that said property was sold for a delinquent assessment (specifying the improvement for which the same was made), the amount for which such property was sold, the date of sale, the name of the purchaser, and the time when the purchaser will be entitled to a deed. The superintendent of streets must file one copy of such certificate in his office, and deliver the other to the purchaser, or if the city is the purchaser, to the clerk of the legislative body, who shall file the same in his office. Upon the filing of the copy of such certificate in the office of the superintendent of streets, the lien of the assessment shall vest in the purchaser and is only divested by a redemption of the property as in this act provided. The superintendent of streets shall also enter upon the assessment roll opposite the description of each piece of property offered for sale, the description of the portion thereof sold, the amount

for which the same was sold, the date of the sale, and the name of the purchaser.

Redemption of property sold.

Sec. 16. At any time before the expiration of one year from the date of the sale, any lot or parcel of land sold for a delinquent assessment may be redeemed by any party in interest by the payment to the superintendent of streets of the amount for which the property was sold, and in addition thereto, ten per cent thereon if paid within six months from the date of sale; and twenty-five per cent if paid within twelve months. When redemption is made the superintendent of streets shall note that fact and the date thereof on the duplicate certificate of sale on file in his office, and deposit the amount paid with the city treasurer, who shall credit the purchaser named in the certificate of sale with the said amount and pay the same to such purchaser, or to his assigns, upon the surrender of the certificate of sale and upon satisfactory proof of assignment thereof, if any. When the city is the purchaser, the superintendent of streets shall notify the clerk of the legislative body of the redemption, and such clerk shall thereupon cancel the certificate of sale thereof on file in his office.

Deed after twelve months. Notice to be served on owner. Provisions to be complied with.

Sec. 17. At any time after the expiration of twelve months from the date of sale the superintendent of streets must execute to the purchaser, or to his assignee on his application, if such purchaser or assignee has complied with the provisions of this section, a deed of the property sold, in which shall be recited substantially the matters contained in the certificate, also any assignment thereof, and the fact that no person has redeemed the property. The superintendent of streets shall receive from the applicant for a deed, one dollar for making such deed, unless the city is the purchaser, in which case no charge shall be made therefor. The purchaser or his assignee, must at least thirty days before he applies for a deed, serve upon the owner of the property, and upon the occupant of such property, if the same is occupied, a written notice, setting forth a description of the property, that said property has been sold for a delinquent assessment (specifying the improvement for which the same was made), the amount for which it was sold, the amount necessary to redeem at the time of giving notice, and the time when such purchaser or assignee will apply to the superintendent of streets for a deed. If the said owner cannot be found, after due diligence, said notice must be posted in a conspicuous place upon said property at least thirty days before the time stated therein, at which the application for a deed will be made. The person applying for a deed must file with the superintendent of streets an affidavit or affidavits, showing that notice of such application has been given, as herein required, and if the notice was not served on the owner of the property personally, that due diligence was used to find said owner; which affidavit or affidavits must be filed by the superintendent of streets in his office. If redemption of the property is made after such affidavits are filed, and more than eleven months from the date of sale, the person making such redemption must pay, in addition to the

other amounts required, three dollars for the service of notice and the making of such affidavits, which amount shall be paid over to the purchaser, or his assignee, in the same manner as other sums paid for redemption. No deed for any property sold for delinquent assessment shall be made until the purchaser, or his assignee, has complied with all of the provisions of this section, and filed the proper affidavits with the superintendent of streets. Such deed shall be prima facie evidence of the truth of all matters recited therein, and of the regularity of all proceedings prior to the execution thereof, and of title in the grantee.

Special fund. Loan to special fund.

Sec. 18. The funds collected by the superintendent of streets under the proceedings herein provided for, either upon voluntary payment or as the result of sales, shall be paid by said superintendent of streets as fast as collected to the treasurer of said city, who shall place the same in a special fund designated by the number or name of the proceedings, and payment shall be made out of said special fund only for the purposes provided for in this act. To expedite the making of any such improvement the legislative body may at any time transfer into said special fund out of any money in the general fund such sums as it may deem necessary, and the sums so transferred shall be deemed a loan to such special fund, and shall be repaid out of the proceeds of the assessments provided for in this act; *provided, however*, that the legislative body of any municipality may, in its discretion, order by resolution entered upon its minutes that the whole, or any part, of the costs and expenses of any of the work mentioned in this act shall be paid out of the treasury of the municipality from such fund as the legislative body may designate, and whenever a part of such cost and expenses is so ordered to be paid the commission in making up the assessment heretofore provided for such cost and expenses shall first deduct from the whole cost and expenses such part thereof as has been so ordered to be paid out of the municipal treasury, and shall assess the remainder of said costs and expenses proportionately upon the lots, part of lots and lands within the district to be assessed for such work, and in the manner heretofore provided.

Public property may be omitted from assessment. Lots may be assessed.

Sec. 19. Whenever any lot, piece or parcel of land belonging to the United States or to the State of California, or to any county, city, public agent, mandatory of the government, school board, public educational, penal, or reform institution, or institution for the feeble-minded or the insane, and being in use in the performance of any public function, is included within the district declared by the legislative body in the resolution of intention to be the district to be assessed to pay the costs and expenses of the improvement, the legislative body may, in its discretion, in the resolution of intention declare that such lots, pieces, or parcels of land so owned and in use, or any of them, shall be omitted from the assessment to be made to cover the costs and expenses of said work or improvement. In the event that said lots, pieces, or parcels of land, or any of them, shall by said resolution be omitted from the assessment, then the total expense of all work done shall be assessed on the remaining lots lying within the limits of the assess-

ment district without regard to such omitted lots, pieces or parcels of land. In the event the legislative body shall in its resolution of intention declare that the said lots, pieces or parcels of land so owned and in use, or any of them shall be included in the assessment, or in the event that no declaration is made respecting such lots, pieces or parcels of land, then such sum or sums as thereafter may be assessed against such lots, pieces or parcels of land so owned and used shall be payable by the city, out of its general fund, unless the legislative body shall in its resolution of intention designate another fund, and the contract for said work or improvement thereafter made shall contain a provision to that effect; *provided, however*, that any such sum or sums which may be assessed against any such lots, pieces or parcels of land so owned and used, shall not be payable by the city when such sum or sums are paid by the owner of or the governing body controlling such lots, pieces or parcels of land. After all sales provided for in section fourteen of this act have been made the superintendent of streets shall report to the city treasurer the amount collected. (As amended Statutes 1921, p. 339.)

When awards of damages are payable.

Sec. 20. When sufficient money is in the hands of the city treasurer in the special fund devoted to the proposed improvement to pay the total amount of estimated damages therefrom, all expenses of the proceedings and the cost of doing the work, it shall be the duty of the superintendent of streets to notify the contractor for the work of that fact, and to draw demands on said special fund for the respective amounts of damages awarded by the report and to notify the owner of each parcel of land declared by the report to be damaged, if the name of such owner is stated in the report, that the awards of damages are payable, and that he may receive the sum awarded to him on executing a release to the city of all liability for damages caused by said improvement. Such notification may be given by depositing a notice, postage prepaid, in the post office addressed to such person at his last known place of residence.

Refusal to accept award. Action to recover amount claimed.

Sec. 21. If any owner of property that will be damaged by the proposed improvement shall fail or refuse to accept the amount awarded to him by the report provided for in section 10 hereof, the legislative body may cause proceedings to be brought against him in the name of the city, in the proper superior court, to have the amount of damage to such property determined. Such proceedings shall conform, as nearly as may be, to the provisions of the Code of Civil Procedure, regarding eminent domain; *provided, however*, that the plaintiff shall not be required to pay the amount of damages awarded within thirty days after judgment. In such proceeding the ordinance ordering the improvement shall be conclusive evidence of the necessity of the same. If no such proceeding is brought against him any owner of property that is damaged by the proposed improvement may decline to accept the amount awarded him, if any, and bring an action against the city to recover the amount to which he claims to be entitled. Any such action must be brought within thirty days after the final completion of the im-

provement. If in such action he fails to recover more than the amount awarded to him by the report aforesaid, he shall not recover costs.

When assessments raise insufficient amount.

Sec. 22. If the first assessment for any improvement under this act, or if the sale of any bonds issued to represent assessments under this act as hereinafter provided, fails to raise a sufficient amount of money to pay all costs, damages and expenses of the improvement, including any judgments rendered in the action and proceedings mentioned in section 21 and the costs and expenses of such action or proceedings, the legislative body may pay the deficit out of the general fund, or may order a supplemental assessment to raise such deficit, which shall be made and collected in the same manner, as nearly as may be, as the first assessment, and so on until sufficient money shall have been raised to pay for such improvement.

Improvement bonds may issue.

Sec. 23. The legislative body of any city shall have the power, in its discretion, to determine that serial bonds shall be issued in the manner and form hereinafter provided to represent assessments of twenty-five dollars or more for the cost and expenses of any work or improvements authorized by this act. Said serial bonds shall extend over a period not to exceed twenty-five years from the second day of January next succeeding the issuance of said bonds, and an even annual proportion of the principal sum thereof shall be payable by coupon on the second day of January every year after their date until the whole is paid; *provided*, that if the period over which said bonds are to extend exceeds ten years, one-tenth of the principal sum thereof shall be payable by coupon on the second day of January of each of the last ten years of said period. The interest on said bonds shall be payable semi-annually by coupon on the second day of January and July respectively, of each year, at the rate of not to exceed ten per cent per annum on all sums unpaid, until the whole of said principal and interest is paid. Said bonds and interest thereon shall be paid at the office of the city treasurer of said municipality, who shall keep a fund designated by the name of said bonds, into which he shall receive all sums paid him for the principal of said bonds and the interest thereon, and from which he shall disburse such sums upon the presentation of said coupons; and under no circumstances shall said bonds or the interest thereon be paid out of any other fund. Said city treasurer shall keep a register in his office which shall show the series, number, date, amount, rate of interest, payee and indorsees of each bond, and the number and amount of each coupon of principal or interest paid by him, and shall cancel and file each coupon so paid. (As amended Statutes 1915, p. 1221.)

Owner may elect to have bond issued.

Sec. 24. Whenever the legislative body of any city shall determine that serial bonds shall be issued to represent the cost and expenses of any proposed work or improvement under this act, it shall so declare in the ordinance or resolution of intention to do said work, and shall specify the rate of interest which they shall bear and the period of time over which they are

to run, and said ordinance or resolution shall also state that a bond will issue to represent each assessment of twenty-five dollars or more remaining unpaid at the expiration of thirty days after the first publication or posting of the notice of the recording of the assessment by the superintendent of streets. Whenever it shall have been determined, as provided in section twenty-three of this act, that serial bonds shall be issued to represent assessments amounting to twenty-five dollars, or over, the superintendent of streets shall, forthwith after the full expiration of thirty days from the date of the first publication of the notice of the recording of the assessment roll, or forthwith after the full expiration of thirty days from the recording of a re-assessment in the event that such be made, and after all previous payments have been credited on such re-assessment, make and certify to the city treasurer a complete list of all assessments unpaid, which amount to twenty-five dollars or over upon any assessment or diagram number. (As amended Statutes 1915, p. 1222.)

Method of making election to have bond issued. Default in payment. Form of agreement. Record of election. Form of improvement bond. Bond payable to bearer. Owner may pay off bond.

Sec. 25. Upon receiving the list of assessments mentioned in the preceding section, the city treasurer shall thereupon make out and sign a separate bond representing upon each lot or parcel of land upon said list the total amount of the assessments, or re-assessments, as the case may be, as thereon shown. And if said lot or parcel of land is described upon said assessment and diagram by its number or block, or both, upon the official map of said municipality, or upon any map on file in the office of the county recorder of the county in which said municipality is situated, then it shall be in said bond a sufficient description of said lot or parcel of land to designate it by said number or block, or both, as it appears on said official or recorded map. Said bond shall be substantially in the following form:

Improvement Bond.

\$..... Series..... No.....

Under and by virtue of and pursuant to the provisions of
 (title of act), I, out of the fund for the above designated improvement
 bonds, series will pay to bearer the sum of
 (\$.....) dollars with interest at the rate of per cent per
 annum, as is hereinafter specified, at the office of the city treasurer of the
 city of, State of California. This bond is issued to represent
 an assessment for in the city of, as the same
 is more fully described in the assessment therefor. Its amount is the amount
 assessed in said assessment against the lot numbered therein
 and in the diagram attached thereto, and which now remains unpaid; but
 until paid, with accrued interest, is a first lien upon the property affected
 thereby, as the same is described herein, and in said recorded assessment
 with its diagram, to-wit: The lot or parcel of land in the city of,
 county of, State of California, described as follows:

.....

This bond is payable exclusively from said fund, and neither the city of, nor any officer thereof is to be holden otherwise for its principal or interest. The term of this bond is years from January second, 19....., and at the expiration of said time the whole sum then unpaid shall be due and payable; but on the second day of January of each year, after the date hereof, an even annual proportion of its principal is due and payable upon presentation of the coupon therefor, until the whole is paid, with accrued interest, at the rate of per cent per annum.

The interest is payable semi-annually on the second day of January and July in each year hereafter upon presentation of the coupons therefor, the first of which is for the interest from date to the second day of, 19....., and thereafter the interest coupons are for the semi-annual interest.

Should default be made in the first, or any succeeding payment of the principal, or in the payment of interest, by the owner of said lot, or any one in his behalf, the holder of this bond is entitled to declare the whole unpaid amount to be due and payable, and to have said lot or parcel of land advertised and sold forthwith, in the manner provided by law.

Dated at said city of, thisday of, in the year one thousand nine hundred and

.....
City treasurer of the city of
.....

No mistake or error in the description in the bond of the lot assessed shall affect the validity or lien of the bond, unless the mistake or error is such that the lot cannot be identified, and in such event the holder of such bond may have the same corrected upon application to the city treasurer and the officers or board who made the assessment to represent which such bond was issued.

In case the amount of the unpaid assessment or re-assessment upon any lot or parcel of land shall be less than twenty-five dollars, then the same shall be collected as is provided in this act. If any person, or his authorized agent, shall at any time before the issuance of the bond for said assessment or re-assessment upon his lot or parcel of land present to the city treasurer his affidavit made before a competent officer, that he is the owner of a lot or parcel of land in said list, accompanied by the certificate of a searcher of records that he is such owner of record, and shall with such affidavit and certificate notify said treasurer in writing that he desires no bond to be issued for the assessment upon said lot or parcel of land, then no such bond shall be issued therefor and the street superintendent shall retain his right for enforcing collection of said assessment or re-assessment as if said lot or parcel of land had not been so listed by the street superintendent. The bonds so issued by said treasurer shall be payable to the bearer, and shall be serial bonds, as is hereinbefore described, and shall bear interest at the rate specified in the resolution of intention to do said work. They shall have annual coupons attached thereto, payable in annual order on the second day of January in each year after the date of the bonds until all are paid, or if the term of said bond be more than ten years, then said coupons shall be payable on the second day of January of each of the last ten years of the

term of the bonds; and each coupon shall be for an even annual proportion of the principal of the bond. They shall have semi-annual interest coupons thereto attached, the first of which shall be payable upon the second day of January or July, as the case may be, next after its date, and shall be for the interest accrued at that time, and the rest of which shall be for the semi-annual interest accruing from the second day of January or July, as the case may be. The owner of, or any person interested in, any lot or parcel of land upon which a bond has been issued, under the terms of this act, may at any time pay off such bond and discharge his land from the lien of the assessment, by paying to the city treasurer for the holder of such bond the amount then unpaid on the principal sum thereof, and all interest thereon which has accrued and is unpaid, together with the semi-annual installment of interest which will next become due thereafter, and in addition thereto, interest for one year at the rate specified in the bond upon the unpaid amount of the principal. The treasurer shall thereupon make an entry upon his bond register that such bond has been paid in full. When all the coupons of principal and interest are paid or the bond is surrendered or satisfied, the city treasurer shall report the fact to the street superintendent, who shall forthwith indorse the same on the margin of the record of the assessment to the credit of which the same is paid. (As amended, Statutes 1915, p. 1222.)

New assessment may be made if assessment declared invalid by court. Irregularities to be pointed out. City may set aside assessment and make reassessment to be based on special benefits. Method of reassessment. Notice: Payments on original assessment to be credited.

Sec. 26. Whenever any assessment heretofore issued or which may be hereafter issued is or shall be void, or unenforceable, for want of sufficient authority for its issuance or from irregularities, or illegalities in the proceedings, or if bonds shall have been, or shall be, issued to represent any assessments and such issuance shall not have been, or shall not be effective through the curative provisions thereof to make them valid and enforceable, then, in any of such events a reassessment therefor shall be issued. The true intent and meaning of this section is to make the cost and expense of work or improvement made through an attempted compliance with this act, payable by the real estate benefited by such work or improvement by making a reassessment therefor.

Such power of reassessing embraces both a full and a partial reassessment, and is not exhausted by a single attempted exercise thereof.

A reassessment shall be ordered under any one of three circumstances:

First—Where the owner or holder of any assessments, or of bonds issued to represent assessments requests the legislative body of the city in which the assessment has been or shall be issued to order a reassessment. In such event if said legislative body be of the opinion that the assessments or bonds in question are not enforceable, it shall order the making and issuing of a reassessment covering only the assessments owned or held by the petitioner, or the assessments represented by the bonds owned or held by such petitioner.

Second—Whenever any court of competent jurisdiction in any suit to foreclose the lien of any assessment or to enforce the obligation of any bond

issued to represent any assessments issued under this act, has for any reason held such lien unenforceable, then it shall in and by its decree direct the making of a reassessment to cover the assessments involved in such suit.

Third—Whenever any court of competent jurisdiction in any suit to set aside the lien of any assessment or of any bond representing any assessment or in any suit to quiet title against the lien of any such assessment, or bond shall in its judgment decree such assessments or bonds to be void, or unenforceable, then it shall in and by its decree direct the making of a reassessment to cover the assessments involved in such suit.

The manner of making, issuing and enforcing the reassessments shall be as follows:

The superintendent of streets shall, upon the entering of a decree of court directing a reassessment or upon the making of an order by the legislative body of the city directing a reassessment, assess upon and against the lots, pieces or parcels of land mentioned in the decree or order the benefits derived or to be derived by each from the said work or improvement estimated as of the date of the original assessment.

To each sum so reassessed there shall be added interest thereon from the date of the original assessment at the rate of seven per cent (7%) per annum. Such assessment need not be in any prescribed form, but shall refer to the original assessment, give the date of the original assessment and state that it is made pursuant to the order of the legislative body of the city or decree of the court, as the case may be. It shall then be presented to the legislative body, which shall fix a time for hearing before it. Such time must be at least twenty days after the reassessment is so presented. The city clerk shall then advertise the time of such hearing before the legislative body by publishing a notice in the newspaper in which the notice of award of contract for the improvement for which the assessment was made, was published unless the legislative body directs publication in some other paper. Such notice shall be published for five insertions, if the paper be a daily, or by two insertions, if the paper be published less frequently. At the time fixed for said hearing, or at such time or times to which the same may be thereafter adjourned, the legislative body shall consider the objections to said reassessment and in its discretion informally direct the revision, correction or modification of such reassessment in such manner as is most equitable. When such reassessment shall have been revised, or corrected or modified so as to comply with the judgment of said legislative body, then it shall pass a resolution confirming the reassessment. The street superintendent shall thereupon record the reassessment with a certificate at the end thereof by the city clerk, that it is the reassessment approved by the legislative body of the city. He shall also note opposite the several assessments in the original assessment that have been displaced by the reassessment the fact that the reassessment has been made, giving its date, and shall credit upon such reassessment all payments theretofore made upon the original assessment, or upon the bonds issued to represent the same, applying such payments first to the interest due and then upon the principal. Such reassessment shall be collectible and payable in the same manner as an original assessment and shall be enforceable by suit in the manner herein provided for

enforcing an original assessment. In the event that bonds issued under the original assessment they shall also issue upon the reassessment for such sum as may be reassessed against the lot, piece or parcel of land covered thereby. The lien of such reassessment shall hold its relative rank as to other special assessment liens as of the date of the original assessment. (As amended Statutes 1921, p. 269.)

Record of bonds issued.

Sec. 27. The city treasurer shall enter in a book kept for that purpose in his office, a record of each bond issued hereunder, specifying the date of its issue, the amount for which issued, to whom delivered, its duration and a description of the lot against which issued. Payments of principal and interest on account of any bond issued hereunder shall be made to the city treasurer, who shall keep a separate account of all such payments, (entering the same in the record herein required to be kept) and place the same in appropriate funds for the payment of principal and interest of the bonds on account of which paid, and who shall, upon the surrender of the coupons attached to said bond, pay to the holder thereof, or his order, the amount called for by said coupons out of the funds in his possession applicable thereto.

Bonds lien on property.

Sec. 28. The improvement bonds issued hereunder shall take the place of and have the same force, validity and effect as assessment liens that the assessments would have had if no bonds had been issued, and the lien of of said bonds shall not be held or construed to be merely contractual. Said bonds shall by their issuance be conclusive evidence of the regularity and validity of all proceedings leading up thereto. The amount due upon any such bond shall be a lien upon the lot described in such bond superior to all other liens, charges and incumbrances, except the liens of prior assessment and of municipal, state and county taxes.

Sale of bonds.

Sec. 29. Improvement bonds or any number of such bonds, issued hereunder, except as otherwise provided in this act, shall be sold to the highest cash bidder, after advertisement for bids, which advertisement shall be published for at least three times in a daily newspaper published and circulated in said city, or if there be no such daily newspaper, then such advertisement shall be published at least once in a weekly or semi-weekly newspaper so published and circulated, or shall be sold in such other manner as the legislative body may determine. If any bond be sold for an amount in excess of par such excess shall be paid into such fund of the city as the legislative body thereof may prescribe. The proceeds of the sale of such improvement bond shall be paid into the fund of the proceeding to represent assessments in which said bonds were issued.

Unsold bonds turned into fund. Contractor may advance incidental expenses.

Sec. 30. Any bonds not sold at the full expiration of fifteen days after the completion of the publication of the advertisement provided for in the preceding section shall be turned into the fund for the improvement for which

the assessment is made, and shall be deemed and treated as so much money in said fund, and shall upon final acceptance of said improvement be issued to and accepted by the contractor for the work, or his assigns, in payment *pro tanto* of the contract price of said improvement, provided there is sufficient money in the said fund to pay all incidental expenses and all awards of damages that must be paid prior to the doing of the work. Whenever in the proceedings for any improvement bonds are authorized under the provisions of this act, and at the expiration of fifteen days after the completion of the publication of said advertisement, there is not sufficient money in the fund for the improvement to pay the incidental expenses and the amount of any award or awards of damages that must be paid prior to the doing of the work, the contractor may advance to the fund for said improvement an amount sufficient to pay said incidental expenses and damages, and receive therefor bonds in sufficient amount, at their par value, exclusive of any accrued interest thereon, to equal the amount-so advanced by him. If the said contractor in such event fails, neglects or refuses for a period of ten days after written notice from the city treasurer that said fifteen days from the completion of the publication of said advertisement has expired, and that there is not sufficient money in said fund to pay said incidental expenses and said awards of damages, to advance to said fund a sum sufficient for said purposes, the legislative body of the municipality may, in its discretion, declare said contracts forfeited, and said contractor shall thereupon lose all rights under said contract.

Bonds in satisfaction of damages.

Sec. 31. The owner of any property assessed, to whom damages have been awarded, as provided in this act, may take such bonds, or any thereof, in lieu of, or in satisfaction *pro tanto* of, such damages. When so taken such bond shall be deemed to have been sold to such owner and the amount of damages to which he is entitled shall be reduced by the amount of such bonds so taken at their par value. Such owner may, also, at any time after such assessment becomes payable, and before the sale of said property for non-payment thereof, demand of the street superintendent that such assessment, or any number of such assessments, be offset against the amount of damages to which he is entitled. Thereupon, if the amount of such damages be equal to or greater than such assessments, including any penalties and costs due thereon, the assessments shall be marked "paid by offset"; and if said amount be less than said assessments, and any penalties and costs due thereon, the person demanding such offset shall at the same time pay the difference to the street superintendent in money, and the assessments shall, on such payment, be marked paid, the entry showing what part thereof is paid by offset and what part in money.

Advance from general fund to pay incidental expenses.

Sec. 32. The legislative body of any municipality may, in its discretion, upon the failure of any contractor to advance sufficient money to the fund devoted to any improvement to pay the incidental expenses and the awards of damages as hereinabove provided, advance from the general fund, or from such fund as said legislative body may designate, to said fund the

amount necessary for such purposes. Whereupon the city treasurer shall issue to said city bonds of the improvement in an amount equal at their par value to the amount of money so advanced by the said city, and in any event it shall be competent for the city to advance to the appropriate fund the par value of all or any part of said bonds, in which case the said bonds shall be issued to the city, and the said city shall have the same rights in respect to the enforcement and collection thereof as other purchasers. Where the city advances money as in this section provided, it shall have full authority at any time to sell said bonds at a point acceptable to the legislative body thereof.

Remaining bonds treated as cash.

Sec. 33. Whenever the contractor or the city has advanced to the appropriate fund an amount sufficient to pay the incidental expenses and awards, and has received bonds at their par value in an amount equal to the sum so advanced, as hereinbefore provided, the bonds remaining shall be turned into said fund, and shall be treated and regarded as so much money in said fund, and shall upon final acceptance of the work be issued to and received by the contractor in payment *pro tanto* of the contract price of the said improvement.

Sale of lots for delinquent interest on bonds.

Sec. 34. Whenever, through the default of the owner of any lot or parcel of land upon which such bond is issued to represent the assessment, payment, either of the principal or of the interest, is not made when the same has become due, and the holder of the bond thereupon demands, in writing, that the city treasurer proceed to advertise and sell said lot or parcel of land as herein provided, then the whole bond or its unpaid remainder, with its accrued interest, as expressed in said bond, shall become due and payable immediately, and on the day following shall become delinquent.

Publication of notice. Notice served on owner.

Sec. 35. Upon the application of the holder of any bond that is now or shall hereafter become delinquent as hereinbefore provided the said city treasurer shall publish twice in a newspaper of general circulation, to be designated by him, published in the city where his office is situated, a notice which must contain the date, number, and series of the delinquent bond, a description of the property mentioned in said bond, and the name of the owner of such property (if known), and if unknown, the fact shall be so stated, the amount due thereon, and a statement that unless the amount of said bond and the interest due thereon, together with the cost of publication of such notice are paid, the real property described in said bond will be sold at public auction on a day to be therein fixed, which shall not be less than fifteen nor more than thirty days from the date of the first publication of said notice, and the place of such sale, which must be in or in front of the office of the said city treasurer. A like notice shall not less than fifteen days before the day of sale so fixed be served upon any such owner if known either personally or by depositing the same in the post office at such city addressed to such owner at his address if known with the postage thereon prepaid. At any time

prior to the sale, the owner or person in possession of any real estate offered for sale under the provisions of this act may pay the whole amount of said bond then due, with costs, and such bond shall thereupon be canceled; but in case such payment is not made by such owner or person in possession, or by some one in behalf of such owner, or person in possession, the property subject thereto shall be sold at public auction to the bidder offering to pay the amount due on the bond with costs for the least portion of such lot or parcel of land offered for sale.

Affidavit of publication.

Sec. 36. The city treasurer, before the day of sale hereinafter provided for, must file with the city clerk a copy of the publication, with an affidavit of the publisher of such newspaper, or some one in his behalf, attached thereto, that it is a true copy of the same; that the publication was made in a newspaper, stating its name and place of publication and the date of each issue thereof in which such publication was made, on which affidavit is *prima facie* evidence of all the facts stated therein.

Expenses.

Sec. 37. The city treasurer must collect, in addition to the amount due on such bond, the cost of the publication of such notice, and fifty cents for the certificate of sale delivered to the purchaser as hereinafter provided.

City treasurer's record.

Sec. 38. The city treasurer, before delivering any certificate of sale, must, in a book kept in his office for that purpose, enter the date, number and series of the bond, description of the lands sold, corresponding with the description in the certificate, the date of sale, purchaser's name, the amount paid, regularly number the descriptions on the margin of the book, and put a corresponding number on each certificate. Such book must be open to public inspection during office hours, when not in actual use, and he shall enter on the record of the bond the words "canceled by sale of the property," giving the date of such sale.

Purchaser's lien on property.

Sec. 39. Immediately on the sale, the purchaser shall become vested with a lien on the property, so sold to him, to the extent of his bid, and is only divested of such lien by the payment to the city treasurer of the purchase money, including costs herein provided for, with interest thereon, at the rate of one per cent per month from the date of sale.

Redemption of property.

Sec. 40. A redemption of the property sold may be made by the owner of the property, or any party in interest, within twelve months from the date of purchase, or at any time prior to the application for a deed, as hereinafter provided. Redemption must be made in lawful money of the United States, and when made to the city treasurer he must mark the word "Redeemed," the date and by whom redeemed on the margin of the book where the entry of the certificate is made, and credit the amount paid to the purchaser named in the certificate, and pay the same to such purchaser, or his assignee, upon

the surrender of the certificate of sale, and upon satisfactory proof of an assignment thereof, if any.

Deed after one year. Notice to owner. Fee for service.

Sec. 41. If the property is not redeemed within the time allowed by the provisions of the foregoing section, the city treasurer, or his successor in office, upon application of the purchaser, or his assignee, must make to said purchaser, or his assignee, a deed to the property, reciting in the deed, substantially, the matter contained in the certificate, and that no person has redeemed the property during the time allowed for its redemption. The treasurer shall be entitled to receive from the purchaser two dollars for making said deed, which shall be deposited in the city treasury for the use of the city after payment has been made therefrom for the acknowledgment of said deed; *provided, however*, that the purchaser of the property, or his assignee, or agent, must thirty days prior to the expiration of the time of the redemption, or thirty days before his application for a deed, serve upon the owner or agent of the property purchased, if named in such certificate of sale, and upon the party occupying the property, if the property is occupied, a written notice, stating that said property, or a portion thereof, has been sold to satisfy the bond lien, the date of sale, the date, number, and series of the bond, the amount then due, and the time when the right of redemption will expire, or when the purchaser will apply for a deed, and the owner of the property shall have the right of redemption indefinitely, until such notice shall have been given and said deed applied for upon the payment of the fees, penalties, and costs in this act required. In case of unoccupied property, a similar notice must be posted in a conspicuous place upon the property at least thirty days before the purchaser applies for a deed; and no deed to the property sold, in accordance with the provisions of this act, shall be issued by the city treasurer to the purchaser of such property until such purchaser shall have filed with such treasurer an affidavit showing that the notice hereinbefore required to be given has been given as herein required, which said affidavit shall be filed and preserved by the said treasurer as other records kept by him in his office. Such purchaser shall be entitled to receive the sum of fifty cents for his service of such notice and the making of such affidavit, which sum of fifty cents shall be paid by the redemptioner at the time and in the same manner as the other sums, costs and fees are paid.

Deed as evidence.

Sec. 42. The deed, when duly acknowledged or proved, shall be conclusive evidence of all things which the bond upon which it is based is conclusive evidence, and *facie prima* evidence of the regularity of all proceedings subsequent to the issue of the bond, and conveys to the grantee the absolute title to the lands described therein, free of all incumbrances, except the lien for state, county and municipal taxes.

Abandonment of proceedings. Readvertisement for bids.

Sec. 43. The legislative body of any municipality may, in its discretion, at any time prior to the letting of the contract for any improvement under

this act, determine that said proceedings shall be abandoned, which determination shall be declared by ordinance or by resolution entered upon its minutes. Such legislative body may in like manner abandon such proceedings after the letting of such contract in any case where the contractor has failed to begin work within the time provided in this act, or has failed to complete the same within the time specified in the contract, or has failed to diligently prosecute the said work after beginning the same. Such legislative body may also in like manner abandon said proceedings when the contractor has failed, neglected or refused for a period of ten days after receiving the notice from the city treasurer that there is not enough money in the fund for the improvement to pay the incidental expenses and the awards of damages, as hereinbefore provided, to advance to said fund an amount sufficient for such purposes. Such legislative body may in any of the contingencies specified in this section, instead of abandoning the said proceedings, direct the superintendent of streets to readvertise for bids for the doing of said work, or any part thereof, and the said contract may be relet as in the first instance, but the bid of any contractor who has failed in any of the obligations imposed upon him by this act, or by his contract, shall not be considered in any subsequent bidding for the same work.

Description by reference.

Sec. 44. In all resolutions, notices, orders and determinations subsequent to the ordinance or resolution of intention a description of the assessment district by reference to the ordinance or resolution of intention shall be sufficient, and in all resolutions, notices, orders, and determinations subsequent to the "Notice of street work" a description of the work by reference to the ordinance or resolution of intention shall be sufficient.

Definitions: "lots or parcels of land"

Sec. 45. The term "lots or parcels of land" whenever mentioned in this act shall be deemed to include, and shall include, property owned or controlled by any person, firm or corporation, as a railroad, street, or interurban railroad right of way, and whenever a railroad, street, or interurban railroad right of way shall be included within any district to be assessed for the cost of any improvement provided for in this act such railroad right of way (whether the same is owned in fee or as an easement or under a franchise) shall be included in the assessment, and shall be assessed in the same manner and with the same effect as other lots or parcels of land are assessed, as provided in this act, and such railroad, street, or interurban railroad right of way shall be subject to sale for non-payment of assessments as in this act provided.

Meaning of words and phrases.

Sec. 46. The following words and phrases shall, where used in this act, have the following meaning:

1. The term "improvement" includes all work, construction, reconstruction and improvements mentioned in section one of this act.

2. The term "city" includes every incorporated city, city and county, or other corporation organized for municipal purposes.

3. The term "city treasurer" includes any officer who has charge and makes payment of the city funds.

4. The term "superintendent of streets" includes any officer or board whose duty it is by law to have the care or charge of streets, or the improvement thereof in any city. In any city where there is no superintendent of streets, or such board, the legislative body is hereby authorized to designate some other officer of the city, or other person, to perform the duties imposed by this act on the superintendent of streets, and all of the provisions hereof applicable to the superintendent of streets shall apply to the officer so designated.

5. The term "owner" or the term "any person interested" is deemed to be the person owning the fee, or the person in whom on the day any protest is filed, the legal title to real property appears by deeds duly recorded in the county recorder's office of the county in which said city is situate; or any person in possession of real property as the executor, administrator, trustee under an express trust, guardian or other legal representative of the owner, or any person in possession of real property under written contract of purchase, duly recorded.

6. The term "incidental expenses" shall be held to mean and include all the necessary expenses and disbursements of the commission, the cost of making the assessment, and all expenses necessarily incurred by the city in connection with the proposed improvement for maps, diagrams, plans, surveys, the mailing of any notices, and other matters incident thereto.

7. The term "delinquency" as herein used shall mean delinquency in the payment of an assessment made under the provisions of this act, and the expression "time of delinquency" shall mean the time in this act fixed when assessments become delinquent. (As amended Statutes 1917, p. 975.)

Act 1909 repealed.

Sec. 47. An act entitled "An act to provide for the improvement of public streets, lanes, alleys, courts and places in municipalities, in cases where any damage to private property would result from such improvement, and for the assessment of the costs, damages and expenses thereof upon the property benefited thereby", approved April 21, 1909, is hereby repealed; *provided*, that proceedings taken under the act hereby repealed, commenced prior to the taking effect of this act, may be continued to completion under the provisions thereof with the same force and effect as if said act were not hereby repealed.

Acts not repealed.

Sec. 48. Except as to the act hereby expressly repealed this act shall in no wise affect any other act or acts on the same subject, nor apply to any proceedings taken thereunder, but is intended to and does provide an alternative system for making the improvements provided for by this act; and it shall be within the discretion of the legislative body of any city to proceed, in making said improvements, under the provisions either of this act or of such other acts; but when any proceedings commenced under this act, the provisions of this act, and of such amendments thereof as may be

hereafter adopted, and no other, shall apply to all such proceedings, and any provisions contained in such other acts or any acts in conflict herewith shall be void and of no effect as to the proceedings commenced under this act.

Title of act.

Sec. 49. The provisions of this act shall be liberally construed to promote the objects thereof. This act may be designated and referred to as the "Street Improvement Act of 1913."

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STREET OPENING ACT OF 1889

An act to provide for laying out, opening, extending, widening, straightening, or closing up in whole or in part any street, square, lane, alley, court or place within municipalities, and to condemn and acquire any and all land and property necessary or convenient for that purpose.

(Approved March 6, 1889. Stats. 1889, p. 70.)

Amended 1909, p. 1034; 1913, p. 376; 1919, p. 464, and 1921, p. 547.

Repealed as to cities over forty thousand, Stats. 1893, p. 220.

1. **Laying out, opening, closing, etc., streets, lanes, alleys, etc.** Whenever the public interest or convenience may require, the city council of any municipality shall have full power and authority to order the opening, extending, widening, straightening, or closing up in whole or in part of any street, square, lane, alley, court, or place within the bounds of such city, and to condemn and acquire any and all land and property necessary or convenient for that purpose. One or more streets, squares, lanes, alleys, courts or places may be included in one proceeding. (As amended Statutes 1921, p. 547.)

Public interest conclusive.

Determination of city council on the question of public interest or convenience is con-

clusive regardless of no declaration to that effect. *People v. Los Angeles*, 62 Cal. App. 781.

2. **Resolution of council declaring intention to perform street work.** Before ordering any work to be done or improvement made which is authorized by section 1 of this act, the city council shall pass a resolution declaring its intention to do so, describing the work or improvement, and the land deemed necessary to be taken therefor, and specifying the exterior boundaries of the district of lands to be affected or benefited by said work or improvement, and to be assessed to pay the damages, cost, and expenses thereof.

Public Property.

Parcels of public property exempted from the assessment district do not have to be

specifically described. *Cohen v. City of Alameda*, 30 Cal. App. Dec. 116.

3. **Street superintendent to post notice.** The street superintendent shall then cause to be conspicuously posted along the line of said contemplated work or improvement, at not more than three hundred feet in distance apart, but not less than three in all, notices of the passage of said resolution. Said notice shall be headed "Notice of Public Works," in letters not less than one inch in length, shall be in legible characters, state the fact of passage of the resolution, its date, and briefly, the work or improvement proposed, and refer to the resolution for further particulars. He shall also cause a notice, similar in substance, to be published for a period of ten days in one or more daily newspapers published and circulated in said city, and designated by said city council; or if there is no daily newspaper so published and

circulated in said city, then by four successive insertions in a weekly or semi-weekly newspaper, so published, circulated, and designated.

Notice must state date of passage of resolution.

Under Section 3 of the Street Opening Act of 1903, which requires the notice to state "the fact and date" of the passage of the ordinance of intention, a notice which fails to correctly state the date of final passage of

the ordinance of intention is fatally defective and is not cured by the notice giving the number of the ordinance, or by a provision that the act is to be liberally construed. *Ferri v. City of Long Beach*, 176 Cal. 645.

4. **Interested person may file objections.** Any person interested objecting to said work or improvement, or to the extent of the district of lands to be affected or benefited by said work or improvement, and to be assessed to pay the cost and expenses thereof, may make written objections to the same within ten days after the expiration of the time of the publication of said notice, which objection shall be delivered to the clerk of the city council, who shall indorse thereon the date of its reception by him, and at the next meeting of the city council after the expiration of said ten days lay said objections before said city council, which shall fix a time for hearing said objections, not less than one week thereafter. The city clerk shall thereupon notify the persons making such objections, by depositing a notice thereof in the postoffice of said city, postage prepaid, addressed to such objector.

5. **Decision of council to be final.** At the time specified or to which the hearing may be adjourned, the said city council shall hear the objections urged, and pass upon the same, and its decision shall be final and conclusive. If such objections are sustained, all proceedings shall be stopped, but proceedings may be again commenced at any time by giving notice of intention to do said work or make said improvement. If such objection is overruled by the city council, the proceedings shall continue the same as if such objection had not been made. At the expiration of the time prescribed during which objections to said work or improvement may be made, if no objection shall have been made, or if an objection shall have been made, and said council, after hearing, shall have overruled the same, the city council shall be deemed to have acquired jurisdiction to order any of the work to be done, or improvements to be made, which is authorized by section 1 of this act.

6. **Jurisdiction.** Having acquired jurisdiction as provided in the preceding section, the city council shall order said work to be done, and unless the proposed work is for closing up, and it appears that no assessment is necessary, shall appoint three commissioners to assess benefits and damages, and have general supervision of the proposed work or improvement until the completion thereof in compliance with this statute. For their services, they shall receive such compensation as the city council may determine from time to time; provided, that such compensation shall not exceed two hundred dollars per month each, nor continue more than six months, unless extended by order of the city council. Such compensation shall be added to and be chargeable as a part of the expenses of the work or improvement. Each of said commissioners shall file with the clerk of the city council an affidavit, and

a bond to the State of California, in the sum of five thousand dollars, to faithfully perform the duties of his office. The city council may at any time remove any or all of said commissioners for cause, upon reasonable notice and hearing, and may fill any vacancies occurring among them for any cause.

City officials as commissioners.

The city clerk, city attorney and city assessor are not disqualified to act as com-

missioners under the Street Bonding Act of 1889. *Cohen v. City of Alameda*, 30 Cal. App. Dec. 116.

7. Commissioners to employ assistance. Said commissioners shall have power to employ such assistance, legal or otherwise, as they may deem necessary and proper; also to rent an office, and provide such maps, diagrams, plans, books, stationery, fuel, lights, postage, expressage and incur such incidental expenses as they may deem necessary.

8. Expenses to be a charge upon the particular work required. All such charges and expenses shall be deemed as expenses of said work or improvement, and be a charge only upon the lands devoted to the particular work or improvement, as provided hereinafter. All payments, as well for the land and improvements taken or damaged, as for the charges and expenses, shall be paid by the city treasurer, upon warrants drawn upon said fund from time to time, signed by said commissioners, or a majority of them. All such warrants shall state whether they are issued for land or improvements taken or damaged, or for charges and expenses, and that the demand is payable only out of the money in said fund, and in no event shall the city be liable for the failure to collect any assessment made by virtue hereof, nor shall said warrant be payable out of any other fund, nor (be) a claim against the city.

9. Assessment for damages. Said commissioners shall proceed to view the lands described in the resolution of intention, and may examine witnesses on oath to be administered by any one of them. Having viewed the land to be taken, and the improvements affected, and considered the testimony presented, they shall proceed, with all diligence, to determine the value of the land, and the damage to improvements and property affected, and also the amount of the expenses incident to said work or improvement, and having determined the same shall proceed to assess the same upon the district of lands declared benefited, the exterior boundaries of which were fixed by the resolution of intention provided for by section 2 hereof. Such assessment shall be made upon the lands within said district in proportion to the benefit to be derived from said work or improvement, so far as the said commissioners can reasonably estimate the same, including in such estimate the real property of any railroad company within said district, if such there be, and may also include in such estimate any or all public property within said district. (Amendment approved April 21, 1909. Stats. 1909, p. 1034. In effect immediately.)

10. Report to council accompanied with a plat of the assessment district. Said commissioners having made their assessment of benefits

and damage, shall, with all diligence, make a written report thereof to the city council, and shall accompany their report with a plat of the assessment district showing the land taken or to be taken for the work or improvement, and the lands assessed, showing the relative location of each district, block, lot, or portion of lot, and its dimensions, so far as the commissioners can reasonably ascertain the same. Each block and lot, or portion of lot, taken or assessed, shall be designated and described in said plat by an appropriate number, and a reference to it by such descriptive number shall be a sufficient description of it in any suit entered to condemn, and in all respects. When the report and plat are approved by the city council, a copy of said plat, appropriately designated, shall be filed by the clerk thereof in the office of the recorder of the county.

11. **Report, what must specify.** Said report shall specify each lot, subdivision, or piece of property taken or injured by the widening or other improvement, or assessed therefor, together with the name of the owner or claimants thereof, or of persons interested therein as lessees, encumbrancers, or otherwise, so far as the same are known to such commissioners, and the particulars of their interest, so far as the same can be ascertained, and the amount of value or damage, or the amount assessed, as the case may be.

12. **When set down to unknown owners.** If in any case the commissioners find that conflicting claims of title exist, or shall be in ignorance or doubt as to the ownership of any lot of land, or of any improvements thereon, or of any interest therein, it shall be set down as belonging to unknown owners. Error in the designation of the owner or owners of any land or improvements, or of the particulars of their interest, shall not affect the validity of the assessment or of the condemnation of the property to be taken.

13. **Filing of report and plat, and publication of.** Said report and plat shall be filed in the clerk's office of the city council, and thereupon the clerk of said city council shall give notice of such filing by publication for at least ten days in one or more daily newspapers published and circulated in said city; or if there be no daily paper, by three successive insertions in a weekly or semi-weekly newspaper so published and circulated. Said notice shall also require all persons interested to show cause, if any, why such report should not be confirmed, before the city council on or before a day fixed by the clerk thereof, and stated in said notice, which day shall not be less than thirty days from the first publication thereof.

14. **Objections must be in writing.** All objections shall be in writing, and filed with the clerk of the city council, who shall, at the next meeting after the day fixed in the notice to show cause, lay the said objections, if any, before the city council, which shall fix a time for hearing the same, of which the clerk shall notify the objectors in the same manner as objectors to the original resolution of intention; at the

time set, or at such other time as the hearing may be adjourned to, the city council shall hear such objections and pass upon the same; and at such time, or, if there be no objections, at the first meeting after the day set in such order to show cause, or such other time as may be fixed, shall proceed to pass upon such report, and may confirm, correct, or modify the same, or may order the commissioners to make a new assessment, report, and plat, which shall be filed, notice given, and hearing had, as in the case of an original report.

15. Duty of clerk of council. The clerk of said city council shall forward to the street superintendent of the city a certified copy of the report, assessment, and plat, as finally confirmed and adopted by the city council. Such certified copy shall thereupon be the assessment-roll. Immediately upon receipt thereof by the street superintendent, the assessment therein contained shall become due and payable, and shall be a lien upon all the property contained or described therein.

16. Duty of superintendent of streets on receiving certified copy of report as confirmed by council. The superintendent of streets shall thereupon give notice by publication for ten days in one or more daily newspapers published and circulated in such city or city and county, or by two successive insertions in a weekly or semi-weekly newspaper so published and circulated, that he has received said assessment-roll, and that all sums levied and assessed in said assessment-roll are due and payable immediately, and that the payment of said sums is to be made to him within thirty days from the date of the first publication of said notice. Said notice shall also contain a statement that all assessments not paid before the expiration of said thirty days will be declared to be delinquent, and that thereafter the sum of five per cent upon the amount of each delinquent assessment, together with the cost of advertising each delinquent assessment, will be added thereto. When payment of any assessment is made to said superintendent of streets, he shall write the word "Paid," and the date of the payment, opposite the respective assessment so paid, and the names of persons by or for whom said assessment is paid, and shall, if so required, give a receipt therefor. On the expiration of said thirty days, all assessments then unpaid shall be and become delinquent, and said superintendent of streets shall certify such fact at the foot of said assessment-roll, and shall add five per cent to the amount of each assessment so delinquent. The said superintendent of streets shall, within five days from the date of said delinquency, proceed to advertise and collect the various sums delinquent, and the whole thereof, including the cost of advertising, which last shall not exceed the sum of fifty cents for each lot, piece, or parcel of land separately assessed, by the sale of the assessed property in the same manner as is or may be provided for the collection of state and county taxes; and after the date of said delinquency, and before the time of such sale herein provided for, no assessment shall be received unless at the same time the five per cent added thereto, as aforesaid,

together with the costs of advertising then already incurred, shall be paid therewith. Said list of delinquent assessments shall be published daily for five days in one or more daily newspapers published and circulated in such city, or by at least one insertion in a weekly newspaper so published and circulated, before the day of sale of such delinquent assessment. Said time of sale must not be less than seven days from the date of the first publication of said delinquent assessment-list, and the place must be in or in front of the office of said superintendent of streets. All property sold shall be subject to redemption in the same time and manner as in sales for delinquent state and county taxes; and the superintendent of streets may collect for each certificate fifty cents, and for each deed one dollar. All provisions of the law, in reference to the sale and redemption of property for delinquent state and county taxes in force at any given time, shall also then, so far as the same are not in conflict with the provisions of this act, be applicable to the sale and redemption of property for delinquent assessments hereunder, including the issuance of certificates and execution of deeds. The deed of the street superintendent made after such sale, in case of failure to redeem, shall be prima facie evidence of the regularity of all proceedings hereunder, and of title in the grantee. It shall be conclusive evidence of the necessity of taking or damaging the lands taken or damaged, and the correctness of the compensation awarded therefor. The superintendent of streets shall, from time to time, pay over to the city treasurer all moneys collected by him on account of any such assessments. The city treasurer shall, upon receipt thereof, place the same in a separate fund, designating such fund by the name of the street, square, lane, alley, court, or place for the widening, opening, or other improvement of which such assessment was made. Payments shall be made from said fund to the parties entitled thereto, upon warrants signed by the commissioners, or a majority of them.

17. Payments for land and improvements, when and how made. When sufficient money is in the hands of the city treasurer, in the fund devoted to the proposed work or improvement, to pay for the land and improvements taken or damaged, and when in the discretion of the commissioners, or a majority of them, the time shall have come to make payments, it shall be the duty of the commissioners to notify the owner, possessor, or occupant of any land or improvement thereon to whom damages shall have been awarded, that a warrant has been drawn for the payment of the same, and that he can receive such warrant at the office of such commissioners upon tendering a conveyance of any property to be taken; such notification, except in the case of unknown owners, to be made by depositing a notice, postage paid, in the postoffice, addressed to his last known place of abode or residence. If at the expiration of thirty days after the deposit of such notice, he should not have applied for such warrant, and tendered a conveyance of the land to be taken, the warrant so drawn shall be deposited with the county treasurer, and shall be delivered to such owner, possessor, or occupant,

upon tendering a conveyance as aforesaid, unless judgment of condemnation shall be had, when the same shall be canceled.

18. **Proceedings to condemn on refusal to accept payment.** If any owner of land to be taken neglects or refuses to accept the warrant drawn in his favor, as aforesaid, or objects to the report as to the necessity of taking his land, the commissioners, with the approval of the city council, may cause proceedings to be taken for the condemnation thereof, as provided by law under the right of eminent domain. The complaint may aver that it is necessary for the city to take or damage and condemn the said lands, or an easement therein, as the case may be, without setting forth the proceedings herein provided for, and the resolution and ordinance ordering said work to be done shall be conclusive evidence of such necessity. Such proceedings shall be brought in the name of the municipality, and have precedence so far as the business of the court will permit; and any judgment for damages therein rendered shall be payable out of such portion of the special fund as may remain in the treasury, so far as the same can be applied. At any time after trial and judgment entered, or preceding an appeal, the court may order the city treasurer to set apart in the city treasury a sufficient sum from the fund appropriated to the particular improvement to answer the judgment and all damages, and thereupon may authorize and order the municipality to enter upon the land and proceed with the proposed work and improvement. In case of a deficiency in said fund to pay the whole of such judgment and damages, the city council may, in their discretion, order the balance thereof to be paid out of the general fund of the treasury or to be distributed by the commissioners over the property assessed by a supplementary assessment; but in the last-named case, in order to avoid delay, the city council may advance such balance out of any appropriate fund in the treasury, and reimburse the same from the collections of the assessment. Pending the collection and payment of the amount of the judgment and damages, the court may order such stay of proceedings as may be necessary.

19. **Duty of treasurer on payment of warrants.** The treasurer shall pay such warrants out of the appropriate fund, and not otherwise, in the order of their presentation; provided, that warrants for land or improvements taken or damaged shall have priority over warrants for charges and expenses, and the treasurer shall see that sufficient money is and remains in the fund to pay all warrants of the first class before paying any of the second.

20. **Supplementary assessment to meet delinquency. Pro rata dividend.** If after the sale of the property for delinquent assessments there should be a deficiency, and there should be unreasonable delay in collecting the same, or if for the purpose of equalizing the assessments supplying a deficiency, or for any cause it appear desirable, the commissioners may so report to the city council, who may order them to

make a supplementary assessment and report the same in manner and form as the original, and subject to the same procedure. If by reason of such supplementary assessment, or for any cause, a surplus should remain after all claims against the improvement fund have been paid, the city council may appropriate said surplus and declare a dividend pro rata to the parties paying the same, and they, upon demand, shall have the right to have the amount of such pro rata dividends refunded to them, or credited upon any subsequent assessments for taxes made against said parties in favor of said city; provided, the city council may appropriate and transfer the said surplus to the general fund of the fiscal year in which the surplus exists, if said surplus does not exceed five per cent of the total amount expended out of the improvement fund; and, provided, further, that said surplus so transferred shall in no case exceed one thousand dollars. (As amended Statutes 1913, p. 377.)

21. **Proceedings to settle defective title.** If any title attempted to be acquired by virtue of this act shall be found to be defective from any cause, the city council may again institute proceedings to acquire the cause as in this act provided, or otherwise, or may authorize the commissioners to purchase the same and include the cost thereof in a supplementary assessment as provided in the last section.

22. **Proceedings when boundaries of districts of lands affect the whole city.** If the city council deem it proper that the boundaries of the districts of lands to be affected and assessed to pay the whole or any portion of the damages, cost and expenses of any work or improvement under this act, shall include the whole city, then the commissioners appointed shall proceed in a summary manner to purchase the lands to be taken or condemned from the owners and claimants thereof. If said commissioners and the owners and claimants can not agree upon the price to be paid for said lands, they shall proceed to view and value the same, and shall thereupon make a summary report to the city council. Upon final confirmation of the report, the city council, if there be not sufficient money available in the city treasury, shall cause the whole or any such portion of the cost and expenses of the contemplated public improvement to be assessed upon the whole of the taxable property of said city, and to be included in and form part of the next general assessment roll of said city, and with like effect in all respects as if the same formed a part of the city, state and county taxes; and when the same shall have been collected the said city council shall cause the land required to be paid for or the value thereof tendered, and the said contemplated public improvement to be forthwith made and completed. All the provisions of the preceding sections not in conflict with this section shall be applicable thereto. (As amended Statutes 1919, p. 464.)

23. **Definition and construction of terms.** 1. The words "work" and "improvement," as used in this act, shall include all work mentioned in section 1 of this act.

2. Notices to be posted when publication cannot be had. In case there is no daily or weekly or semi-weekly newspaper printed and circulated in the city, then such notices as are herein required to be published in a newspaper shall be posted and kept posted for the length of time required herein for the publication of the same in a weekly newspaper, in three of the most public places in such city. Proof of the publication or posting of any notice provided for herein shall be made by affidavit of the owner, publisher or clerk of the newspaper or of the poster of the notice.

3. Construction of words "municipality" and "city." The word "municipality" and the word "city" shall be understood and so construed as to include all corporations heretofore organized and now existing, or hereafter organized, for municipal purposes.

4. Construction of terms "street superintendent" and "superintendent of streets." The terms "street superintendent" and "superintendent of streets," as used in this act, shall be understood and so construed as to include, and are hereby declared to include any person or officer whose duty it is, under the law, to have the care or charge of the streets, or the improvement thereof, in any city. In all those cities where there is no street superintendent or superintendent of streets, the city council thereof is hereby authorized and empowered to appoint a suitable person to discharge the duties herein laid down as those of street superintendent or superintendent of streets; and all the provisions hereof applicable to the street superintendent or superintendent of streets shall apply to such person so appointed.

5. Construction of term "city council." The term "city council" is hereby declared to include any body or board which, under the law, is the legislative department of the government of any city.

6. Construction of terms "clerk" and "city clerk." The terms "clerk" and "city clerk," as used in this act, are hereby declared to include any person or officer who shall be clerk of said city council.

7. Construction of terms "treasurer" and "city treasurer." The term "treasurer" or "city treasurer," as used in this act, shall include any person or officer who shall have charge and make payment of the city funds.

8. Publications or notice. No publications or notice other than that provided for in this act shall be necessary to give validity to any proceedings had thereunder.

24. Proceedings commenced before passage of this act to be continued by resolution of council. The proceedings in any work or im-

provement, such as is provided for in this act, already commenced, and now progressing under any other act now in force, or by virtue of any ordinance passed by any city council or board of supervisors of any city, county, or city and county, by virtue of any other act now in force, may, from any stage of such proceedings already commenced and now progressing, be continued under this act by resolution of the city council. The said work or improvement may then be conducted under the provisions of this act with full force and effect in all respects, from the stage of such proceedings under such other acts or ordinances at and from which such resolution shall declare an election or intention to have said work of improvement cease under such other act or ordinance, and continue under this act; and from such election so made, all proceedings theretofore had under such other act or ordinance are hereby ratified, confirmed, and made valid, and it shall be unnecessary to renew or conduct over again proceedings had under such other act or ordinance. This section shall not apply to any work or improvement, proceedings in which were commenced more than eighteen months prior to the passage of this act.

25. **Act to be liberally construed.** The provisions of this act shall be liberally construed to promote the objects thereof. This act shall take effect and be in force from and after its passage.

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STREET OPENING BOND ACT OF 1921

In effect July 29, 1921.

An act providing for the issuance of improvement bonds to represent certain special assessments for public improvements under the "street opening act of 1889" and providing for the effect and enforcement of such bonds.

(Approved May 24, 1921. Statutes 1921, p. 579.)

Definition of various expressions.

Section 1. The expression "street opening act of 1889" as used herein and in the title hereof, shall mean the act (hereinafter referred to as the "street opening act") entitled "An act to provide for laying out, opening, extending, widening, straightening, or closing up, in whole or in part, any street, square, lane, alley, court, or place within municipalities, and to condemn and acquire any and all land and property necessary or convenient for that purpose," approved March 6, 1889, as heretofore amended, and as may be hereafter amended.

The expression "improvement bond" as used herein shall mean a bond issued under the provisions of this act.

The terms "assessment" or "assessment roll" as used herein shall mean a special assessment made under the provisions of said "street opening act."

The term "delinquency" as used herein shall mean delinquency in the payment of an assessment made under said "street opening act," and the expression "time of delinquency" as used herein shall mean the time fixed on said "street opening act" when assessments become delinquent.

The expression "city council" as used herein shall mean the legislative body of the municipality.

Council may issue bonds.

Sec. 2. The city council of any municipal corporation of this state, may, in its discretion, at or before the time of the confirmation of any assessment or assessment roll in proceedings had and taken under the said street opening act, that improvement bonds may issue to represent such assessments, which determination shall be made by ordinance or resolution.

Owner may pay by bonds if in excess of \$50.00.

Sec. 3. Whenever it is determined as provided in section two hereof that improvement bonds may be issued to represent assessments, the owner of any lot or parcel of land against which an assessment has been made, when the amount of such assessment is fifty dollars or over, may at any time prior to delinquency, elect to pay such assessment in installments and to have an improvement bond issued against such lot, in the form and manner and with the effect in this act provided.

Owner must file in writing, and form of agreement, etc.

Sec. 4. Such election shall be made by such owner or his agent thereunto duly authorized in writing filed with the superintendent of streets an

affidavit made before a competent officer that he or his principal, as the case may be, is the owner of the lot or parcel of land in question, which affidavit must be accompanied by a certificate of a searcher of records, that he or his principal is such owner and also by filing with such officer a written agreement upon the form hereinafter fixed, waiving all objections of whatsoever kind or nature against the assessment and all proceedings thereto and undertaking to pay the amount of such assessment in either five or ten annual installments, each of which shall be due on the first day of July of each year, and the first of which shall be due on the first day of July next following the date of such bond, with interest on all deferred payments at the rate of eight per cent per annum, payable at the same time as the installments of principal. Said agreement shall contain a provision to the effect that in case of default in the payment of any installment of the principal provided for therein, or interest accrued on deferred payments, at the time called for by said agreement, then and in that event, the entire remaining unpaid installments shall become immediately due and payable, and that the same, and all liens and agreements which are security therefor, may be collected and enforced as in this act provided. Said agreement shall be in the following or substantially the following form (filling blanks):

The undersigned, being the owner of the lot assessed in the assessment for said lot being assessed therein for the sum of (\$.....) dollars, does hereby expressly waive and release all objections of whatsoever kind or nature against the said assessment and all proceedings prior thereto, and in consideration of the benefit of said improvement and of the extension of time for paying therefor herein requested, do undertake and agree to pay the amount of said assessment, to-wit: the sum of (\$.....) dollars in yearly installments, at the time, in the manner, and with the interest, specified and provided in (title of act), and do request and elect to have a bond issued against said lot in the manner and form and with the effect provided in said act, and do expressly agree that in case of default in the payment of any installment of the principal provided for in said bond, or interest accrued on deferred payments, then, and in that event, that the entire remaining unpaid installments shall become immediately due and payable, and that the same, and all liens and agreements which are security therefor, may be collected and enforced as in this act provided.

Upon an election being effected as herein provided the superintendent of streets shall make a note thereof in his records opposite the assessment as to which such election is made. All agreements and affidavits made and filed hereunder shall be found in a substantial book and kept among the records of the superintendent of streets. At the time of delinquency, such officer shall advise, in writing, the city treasurer respecting the assessments as to which the owners have elected to pay in installments. The city treasurer shall thereupon prepare a separate bond representing each assessment as to which such right of election has been exercised, running for either five or ten years, as specified in the agreement made as herein provided,

which bond shall be in the following or substantially the following form (filling blanks):

Form of bond.

Improvement Bond.

Series.....

No.....

\$

Under and by virtue of and pursuant to the provisions of (title of act), I, out of the fund for the above designated improvement bonds, series will pay to bearer the sum of (\$.....) dollars with interest at the rate of eight (8) per cent per annum, as is hereinafter specified, at the office of the city treasurer of the city of....., State of California. This bond is issued to represent an assessment for in the city of as the same is more fully described in the assessment therefor. Its amount is the amount assessed in said assessment against the lot numbered therein and in the diagram attached thereto, and which now remains unpaid; but until paid, with accrued interest, is a first lien upon the property affected thereby, as the same is described herein and in said recorded assessment with its diagram, to-wit: the lot or parcel of land in the city of, county of, State of California, described as follows:

..... and it is issued in accordance with the written request therefor on file in the office of the of said city.

This bond is payable exclusively from said fund, and neither the city of nor any officer thereof is to be holden otherwise for its principal or interest. The term of this bond is.....years from July 1, 19, and at the expiration of said time the whole sum then unpaid shall be due and payable; but on the first day of July of each year, after the date hereof, an even annual proportion of its principal is due and payable upon presentation of the coupon therefor, until the whole is paid, with accrued interest at the rate of eight per cent per annum.

The interest is payable annually on the first day of July in each year hereafter upon presentation of the coupons therefor, the first of which is for the interest from date to the first day of July, 19....., and thereafter the interest coupons are for the annual interest.

Should default be made in the first, or any succeeding payment of the principal, or in any payment of interest, by the owner of said lot, or anyone in his behalf, the holder of this bond is entitled to declare the whole unpaid amount to be due and payable, and shall thereupon have a right to collect the same and to enforce all liens and agreements which are security therefor as in said act provided.

At the said city of, this day of, in the year one thousand nine hundred and

.....
City Treasurer of the city of.....

Said bonds shall be payable to the bearer and no mistake or error in the description in the bond of the lot assessed shall affect the validity or lien of the bond, unless the mistake or error is such that the lot can not be identified, and in such event the holder of such bond may have the same corrected upon application to the city treasurer and the officers or board who or which made the assessment to represent which such bond is issued.

Treasurer must keep bond record.

Sec. 5. The city treasurer shall enter in a book kept for that purpose in his office, a record of each bond issued hereunder, specifying the date of its issue, the amount for which issued, to whom delivered, its duration and a description of the lot against which issued. Payments of principal and interest on account of any bond issued hereunder shall be made to the city treasurer who shall keep a separate account of all such payments (entering the same in the record herein required to be kept), and place the same in appropriate funds for the payment of principal and interest of the bonds on account of which paid, and who shall, upon the surrender of the coupons attached to said bond, pay to the holder thereof, or his order, the amount called for by said coupons out of the funds in his possession applicable thereto.

Bonds are evidence of validity and lien.

Sec. 6. Improvement bonds issued hereunder shall by their issuance be conclusive evidence of the regularity and validity of all proceedings thereto. The amount due upon any such bond shall be a lien upon the lot described in such bond superior to all other liens, charges, and encumbrances except the liens or prior assessments and of municipal, state and county taxes.

Sale and advertising of bonds.

Sec. 7. Improvement bonds or any number of such bonds, issued hereunder, except as otherwise provided in section nine hereof, shall be sold to the highest cash bidder, after advertisement for bids, which advertisement shall be published for at least three times in a daily newspaper published and circulated in said city, or if there be no such daily newspaper, then such advertisement shall be published once in a weekly or semi-weekly newspaper so published and circulated; provided, however, that said bonds shall not be sold for less than par. If any bond be sold for an amount in excess of par such excess shall be paid into the general fund of the city.

Fund for bond sale.

Sec. 8. The proceeds of the sale of such improvement bonds shall be paid into the fund of the proceeding to represent assessments in which said bonds were issued.

City may advance to bond fund.

Sec. 9. It shall be competent for the city to advance to the appropriate fund the par value of all or any part of said bonds, in which case said city shall have the same rights in respect to the enforcement and collection thereof as other purchasers. Where the city advances money as in this

section provided it shall have full authority at any time to sell said bonds to reimburse itself therefor.

Procedure against delinquent owner.

Sec. 10. Whenever, through the default of the owner of any lot or parcel of land upon which such bond is issued to represent the assessment, payment, either of the principal or of the interest, is not made when the same has become due, and the holder of the bond thereupon demands, in writing, that the city treasurer proceed to advertise and sell said lot or parcel of land as herein provided, then the whole bond or its unpaid remainder, with its accrued interest, as expressed in said bond, shall become due and payable immediately, and on the day following shall become delinquent.

Procedure of advertising delinquents.

Sec. 11. Upon the application of the holder of any bond that is now or shall hereafter become delinquent as hereinbefore provided, the said city treasurer shall publish twice in a newspaper of general circulation, to be designated by him, published in the city where his office is situated, a notice which must contain the date, number, and series of the delinquent bond, a description of the property mentioned in said bond, and the name of the owner of such property (if known), and if unknown, the fact shall be so stated, the amount due thereon, and a statement that unless the amount of said bond and the interest due thereon, together with the cost of publication of such notice are paid, the real property described in said bond will be sold at public auction on a day to be therein fixed, which shall not be less than fifteen nor more than thirty days from the day of the first publication of said notice, and the place of such sale, which must be the office of the said city treasurer. A like notice shall not less than fifteen days before the day of sale so fixed be served upon any such owner if known either personally or by depositing the same in the post office at such city addressed to such owner at his address if known with the postage thereon prepaid.

At any time prior to the sale, the owner or person in possession of any real estate offered for sale under the provisions of this act may pay the whole amount of said bond then due, with costs, and such bond shall thereupon be canceled; but in case such payment is not made by such owner or person in possession, or by some one in behalf of such owner, or person in possession, the property subject thereto shall be sold at public auction to the bidder offering to pay the amount due on the bond with costs for the least portion of such lot or parcel of land offered for sale.

Treasurer must file affidavit, etc.

Sec. 12. The city treasurer, before the day of sale hereinafter provided for, must file with the city clerk a copy of the publication, with an affidavit of the publisher of such newspaper, or some one in his behalf, attached thereto, that it is a true copy of the same; that the publication was made in a newspaper, stating its name and place of publication and the date of each appearance in which such publication was made, which affidavit is prima facie evidence of all the facts stated therein.

Treasurer must collect additional costs.

Sec. 13. The city treasurer must collect, in addition to the amount due on such bond, the cost of the publication of such notice, and fifty cents for the certificate of sale delivered to the purchaser as hereinafter provided.

Treasurer must keep record book.

Sec. 14. The city treasurer, before delivering any certificate of sale must, in a book kept in his office for that purpose, enter the date, number and series of the bond, a description of the land sold corresponding with the description in the certificate, the date of sale, purchaser's name, the amount paid, regularly number the descriptions on the margin of the book, and put a corresponding number on each certificate. Such book must be open to public inspection during office hours when not in actual use, and he shall enter on the record of the bond the words "cancelled by sale of the property," giving the date of such sale.

Purchaser shall have lien.

Sec. 15. Immediately on the sale, the purchaser shall become vested with a lien on the property so sold to him, to the extent of his bid, and is only divested of such lien by the payment to the city treasurer of the purchase money, including costs herein provided for, with interest thereon at the rate of one per cent per month from the date of sale.

Redemptions, how made.

Sec. 16. A redemption of the property sold may be made by the owner of the property, or any party in interest, within twelve months from the date of purchase, or at any time prior to the application for a deed, as hereinafter provided. Redemption must be made in lawful money of the United States, and when made to the city treasurer he must credit the amount paid to the person named in his certificate, and pay it on demand to him or his assignees.

Recorder must record certificate.

Sec. 17. On receiving the certificate of sale, the recorder must file it, and make an entry in a book similar to that required of the city treasurer, the fee for which shall be fifty cents, and on presentation of the receipt of the city treasurer for the total amount of the redemption money, the recorder must, without charge, mark the word "redeemed," the date, and by whom redeemed, on the margin of the book where the entry of the certificate is made.

Treasurer must issue deed.

Sec. 18. If the property is not redeemed within the time allowed by the provisions of section sixteen hereof for its redemption, the city treasurer, or his successor in office, upon application of the purchaser, or his assignee, must make to said purchaser, or his assignee, a deed to the property, reciting in the deed substantially, the matter contained in the certificate and that no person has redeemed the property during the time allowed for its redemption; the treasurer shall be entitled to receive from the purchaser two dollars for making said deed, which shall be deposited in the city treasury for the

use of the city after payment has been made therefrom for the acknowledgment of said deed; provided, however, that the purchaser of the property, or his assignee, or agent, must, thirty days prior to the expiration of the time of the redemption, of thirty days before his application for a deed, serve upon the owner or agent of the property purchased, if named in such certificate of sale, and upon the party occupying the property, if the property is occupied, a written notice, stating that said property, or a portion thereof, has been sold to satisfy the bond lien, the date of sale, the date, number and series of the bond, the amount then due, and the time when the right of redemption will expire, or when the purchaser will apply for a deed, and the owner of the property shall have the right of redemption indefinitely, until such notice shall have been given and said deed applied for, upon the payment of the fees, penalties, and costs in this act required. In case of unoccupied property, a similar notice must be posted in a conspicuous place upon the property at least thirty days before the purchaser applies for a deed; and no deed to the property sold, in accordance with the provisions of this act, shall be issued by the city treasurer to the purchaser of such property, until such purchaser shall have filed with such treasurer an affidavit showing that the notice hereinbefore required to be given has been given as herein required, which said affidavit shall be filed and preserved by the said treasurer as other records kept by him in his office. Such purchaser shall be entitled to receive the sum of fifty cents for his service of such notice and the making of such affidavit, which sum of fifty cents shall be paid by the redemptioner at the time and in the same manner as the other sums, costs and fees are paid.

Deed to be final evidence of sale.

Sec. 19. The deed, when duly acknowledged or proved, shall be conclusive evidence of all things which the bond upon which it is based is conclusive evidence, and prima facie evidence of the regularity of all proceedings subsequent to the issue of the bond, and conveys to the grantee the absolute title to the lands described therein, free of all incumbrances, except the lien for state, county, and municipal taxes.

City council may provide partial payment.

Sec. 20. The city council may, in the resolution of intention, prescribed by section two of said "street opening act of 1889," provide for the payment, out of a city fund, to be therein designated, some certain amount of the estimated costs and expenses of the improvement therein proposed, in which case the "notice of public work" prescribed by section three of said "street improvement act" shall state the fact that such provision is made in such resolution of intention, providing the sum proposed to be paid out of the city treasury, which sum shall be deducted from the total cost and expense of the said proposed improvement, and the remainder of such cost and expense shall be assessed as prescribed by section nine of said street improvement

act; provided, that at the, or before the, time of ordering said improvement to be made the city council shall appropriate, out of the proper fund, and pay into the special fund provided by section sixteen of said street improvement act, the said sum specified in the resolution of intention. Bonds may then issue as hereinbefore provided, to cover the assessment so made.

Act to be liberally construed.

Sec. 21. This act shall be liberally construed to promote the objects thereof.

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STREET OPENING ACT OF 1903

An act to provide for the laying out, opening, extending, widening, or straightening, in whole or in part, of public streets, squares, lanes, alleys, courts, and places, within municipalities, for the condemnation of property necessary or convenient for such purposes, and for the establishment of assessment districts and the assessment of property therein to pay the expense of such improvement.

(Approved March 24, 1903. Stats. 1903, p. 376.)

(Amended 1909, p. 1035; 1911, pp. 855, 894; 1913, p. 429; 1921, p. 565; 1925, Chap. 41, 104.)

Power to open streets, etc.

Sec. 1. Whenever the public interest or convenience may require, the city council of any municipality shall have full power and authority to order the laying out, opening, extending, widening, or straightening, in whole or in part, of any one or more of any public streets, squares, lanes, alleys, courts, or places, within such municipality, and to acquire, by condemnation, any and all property necessary or convenient for that purpose. (As amended Statutes 1921, p. 565.

Declaration of intention. City may pay percentage.

Sec. 2. Before ordering any improvement to be made which is authorized by section one of this act, the city council shall pass an ordinance declaring its intention so to do, which said ordinance shall briefly describe the improvement and the land necessary or convenient to be taken therefor, and shall, in general terms, describe the district to be benefited by said improvement and to be assessed to pay the expense thereof, to be known as the assessment district, and refer to a plat or map, approved by the city council, which shall indicate by a boundary line the extent of the improvement and the land necessary or convenient to be taken therefor and shall indicate by a boundary line the extent of the territory to be included in said assessment district, which plat or map shall be on file in the office of the city engineer before said superintendent of streets shall proceed with the publication and posting of the notices of public work, and shall govern for all details as to the extent of the improvement and the land necessary or convenient to be taken therefor and as to the extent of the said assessment district. The city council may include in one proceeding, under one ordinance of intention, any of the different kinds of improvement mentioned in section one of this act, on any number of any public streets, squares, lanes, alleys, courts or places, within such municipality, or any portion or portions thereof, whether contiguous or otherwise. Said city council may, in its discretion, order and declare that the whole or any percentage of, or any sum toward the expense of said improvement be paid out of the treasury of the municipality, in which case the sum or percentage to be paid shall be stated in said ordinance of intention. (Amended, Statutes 1925, Chap. 104.)

Notice to be posted. Publication. Notice to be mailed to owners. Affidavit of Clerk.

Sec. 3. The street superintendent shall thereupon cause to be conspicuously posted along all streets and parts of streets or other public places or rights of way where any property is to be taken for the widening or straightening thereof, and along or upon any private unimproved property which is to be taken for the opening or extending of any street or other public place, at not more than three hundred feet apart, notices (not less than three in all) of the passage of said ordinance. Said notices shall be headed, "Notice of public work," in letters not less than one inch in length, shall be in legible characters, and shall state the fact and date of the passage of said ordinance and briefly describe the improvement proposed, and refer to said ordinance of intention for a description of the assessment district and for further particulars. He should also cause a notice similar in substance to be published by two insertions in a daily, weekly or semi-weekly newspaper published and circulated in said city and designated by the city council for that purpose. The city clerk shall, immediately upon the publication of the notice required by this section, mail, postage prepaid, to each property owner in the assessment district, at his last known address as the same appears on the tax rolls of said city, or when no address so appears, to the general delivery, a postal card containing a notice which shall be in the following or substantially the following form (filling blanks, to-wit:

"You are hereby notified that on the.....day of..... 19....., the legislative body of the city of....., California, by virtue of the street opening act of 1903, passed an ordinance of intention numbered....., for the opening and widening of.....street between.....street and.....street. Written protests may be filed with the city clerk within.....days after theday of....., 19..... Your property is in the district to be assessed for this improvement.

.....
City Clerk."

If any lots or parcels of land in the assessment district be assessed to "unknown owners" on the tax rolls of said city no postal cards shall be mailed to the owners thereof, but the notice of public work by the publication as herein provided shall be deemed legal notice to such owners of such contemplated improvement.

The failure of the city clerk to mail said postal cards, or any thereof, or the failure of the property owners to receive the same, or the failure of the superintendent of streets to post the notices of street work shall in no wise affect the validity of the proceedings or prevent the city council from acquiring jurisdiction to order the work; *provided, however*, that the city council may require affidavits to be filed showing the posting of notices and the mailing of postal cards before it adopts the resolution ordering the improvement. (As amended Statutes 1921, p. 566.)

Written protest. When majority protests. City deemed owner of percentage.
Protest not signed by majority. Hearing protests. Decision.

Sec. 4. Any persons interested, objecting to said improvement or to the extent of the assessment district, described in said ordinance of intention, may file a written protest with the clerk of the city council, within thirty days after the first publication of the notice required by section three of this act. Every such protest must contain a description of the property in which each signer thereof is interested, sufficient to identify the same, and must set forth the nature of his interest therein, and must be accompanied by the affidavit of one of the signers thereof that each signature thereof is the genuine signature of the person whose name is thereto subscribed; and in case any signature is made by an agent, there must be attached to the protest the affidavit of the agent that he is duly authorized to sign such protest. Any protest not complying with the foregoing requirements, shall not be considered by the city council. In the case of property held by tenancy in common, if any cotenant sign such protest, only the proportionate share of the frontage thereof represented by his interest therein, shall be counted in determining the amount of frontage represented by such protest. The clerk shall indorse on every such protest the date of its reception by him, and, at the next regular meeting of the city council, after the expiration of the time for filing protests, he shall present to said city council all protests so filed with him. If such protests are against said improvement, and said city council finds that the same are signed by the owners of a majority of the frontage of the property fronting on streets or parts of streets within said assessment district, all further proceedings under said ordinance of intention, excepting in the cases hereinafter otherwise provided, shall be barred, and no new ordinance of intention for the same improvement shall be passed within six months after the presentation of such protest to the city council, unless the owners of a majority of the property fronting on streets or parts of streets within said assessment district shall in the meantime petition therefor, or unless at the time of hearing such protests the same shall be overruled by an affirmative vote of four-fifths of the members of the city council, in which event the decision of the city council shall be final and conclusive, and it shall immediately acquire jurisdiction to order the improvement described in the ordinance of intention.

For the purpose of passing upon and determining the sufficiency of such protests in cases where by a resolution of intention it is declared that the city shall pay a percentage of the expense of the improvement, the city shall be deemed to be the owner of frontage within the assessment district bearing the same proportion to the whole frontage therein as the proportion of the expense which it is to pay, and the actual frontage of property within such district shall be increased by the addition of such amount as is necessary to produce said result, and the amount of frontage as so increased shall be the total frontage to be used in determining whether a protest is signed by the owners of a majority of the frontage of the property fronting on streets or parts of streets within said assessment district.

If such protests are against the improvement, and the council finds that they are not signed by the owners of a majority of the frontage of the property fronting on streets or parts of streets within said assessment district, or if such protests are only against the extent of said assessment district, or if the proposed improvement is for the opening or extending of a street for a distance of not more than two blocks intervening between the terminations of two different streets, or two portions of the same street, existing at the time of the passage of the ordinance of intention for the proposed improvement, each of said different streets or said portions of the same streets being at least five blocks in length, and the opening or extending of the street described in the ordinance of intention through such intervening block or blocks will, together with such different streets or portions of the same street so existing, make one connecting or continuous street, as nearly as may be practicable, or if the proposed improvement is for the opening or extending of a street into a different street, for a distance of not more than one block intervening between the termination of such street so proposed to be opened or extended and such different street, when the street so proposed to be opened or extended through such intervening block exists, at the time of the passage of the ordinance of intention, for a distance of at least five blocks, or if the proposed improvement is for the opening or extending of a public street, lane, alley, court or place through the remainder of a block when such public street, lane, alley, court or place exists, at the time of the passage of the ordinance of intention for the proposed improvement, for at least one-half of the distance through such block, the city council shall thereupon fix a time for hearing said protests, not less than ten days after the meeting of the council at which such time is so fixed, and shall cause notice of the time of such hearing to be published for at least five days in a daily newspaper published and circulated in said city, or if there be no such daily newspaper, by at least two insertions in a weekly newspaper so published and circulated, the city council shall hear said protests at the time appointed, or at any time to which the hearing thereof may be adjourned, and pass upon the same, and its decision thereon shall be final and conclusive. If any such protests are sustained, no further proceedings shall be had under said ordinance of intention, but a new ordinance of intention for the same improvement may be passed at any time. If the protests are denied, the proceedings shall continue as if such protests had not been made. At the expiration of the time within which protests may be filed, if none are filed, or if protests are filed, and after hearing are denied, as above provided, then upon such denial, the city council shall acquire jurisdiction to order the improvement described in the ordinance of intention. (Amended, Statutes 1925, Chap. 104.)

Order for improvement.

Sec. 5. Having acquired jurisdiction, the city council shall, by ordinance, order said improvement to be made, and direct an action to be brought by the city attorney, in the proper superior court, in the name of the municipality, for the condemnation of the property necessary or convenient to be taken therefor. Such ordinance need not describe the property to be

taken, nor the assessment district, but may refer to the ordinance of intention for all particulars.

In the event an action has heretofore been brought by the city attorney in the name of the municipality for the condemnation of the property necessary or convenient to be taken for such improvement under authority of law prior to the adoption of the ordinance ordering the improvement to be made, as provided in this section, then and in that event, the said ordinance ordering the improvement may refer to said action and direct the city attorney to continue prosecution of the same, and said action shall then have like effect and be in lieu of and serve all the purposes of the action herein referred to, and shall thereafter be carried on in the same manner and subject to the provisions hereinafter stated, provided that the complaint in said action shall set forth or state the effect of the ordinance of intention in such proceedings but need not set forth or state the effect of the ordinance ordering the improvement. In the event that the complaint in such action shall omit to state the effect of the ordinance of intention in such proceedings, said complaint may be amended as of course to set forth said matters at any time before trial and shall thereupon satisfy the requirement as to reference to the ordinance of intention. (Amended, Statutes 1925, Chap. 104.)

Actions, when to be brought. Procedure.

Sec. 6. Upon the passage of said ordinance ordering said improvement, the city attorney shall bring said action, which action shall be commenced within a period not exceeding one hundred eighty days from the date said ordinance ordering said improvement becomes effective. Said action shall in all respects be subject to and governed by such provisions of the Code of Civil Procedure now existing or that may be hereafter adopted, as may be applicable thereto, except in the particulars otherwise provided for in this act. (Amended, Statutes 1925, Chap. 41.)

Complaint, what shall set forth.

Sec. 7. The complaint shall set forth, or state the effect of, the ordinance of intention, and the ordinance ordering the improvement, but need not set up any other proceedings had before the bringing of the action. Said ordinances shall be conclusive evidence, in such action, of the public necessity of the proposed improvement, and also that the same is located in the manner which will be most compatible with the greatest public good and the least private injury.

Motion to set for trial. Waiver of trial. Referees.

Sec. 8. When all parties defendant to the action have answered, or have been served with summons, and their default entered, the plaintiff or any party defendant to the action whose default has not been so entered, may, upon five days' notice to the parties, except defendants in default, move the court to set the action for trial. If, upon the hearing of such motion, a trial by jury or by the court without a jury is not demanded by the defendants, or any of them, or by the plaintiff, such trial shall be deemed to be waived, and the court must appoint three disinterested persons referees, to ascertain

the compensation to be paid to such defendants so waiving trial by a jury, or by the court without a jury. Such referees must be residents of the municipality where such improvement is to be made, and over the age of twenty-one years, and must take and file with the court an oath to discharge their duties faithfully and impartially. If any of such referees fails to qualify, or resigns, or is removed by order of court, or is or becomes unable to act, the vacancy so created shall be filled by the court. (Amendment approved April 21, 1909. Statutes 1909, p. 1037.)

Report of referees.

Sec. 9. The referees shall at once proceed to view the lands sought to be condemned, and ascertain the compensation proper to be paid to such of the parties interested in each parcel thereof as have waived a trial by jury, or by the court. They shall have power to examine witnesses under oath, to be administered by any of them, and may have subpoenas issued by the clerk of the court, requiring the attendance of witnesses, or the production of evidence before them. They shall make and file with the court a written report of their findings, and of their necessary expenses, within thirty days after the date of their appointment; provided, however, that the time so allowed may be extended, upon good cause shown, by the court or judge thereof, but such extension shall not exceed ninety days; and provided further, that if any vacancy in the referees is created and filled as provided in section 8 of this act, or if new referees are appointed, or if a new report from the same referees is ordered, as provided in section 11 of this act the time herein specified for the filing of such report shall be deemed to be thirty days from the date of the order filling such vacancy, or appointing new referees, or ordering a new report from the same referees, and the same may be extended accordingly, as above provided. Any two of such referees who agree thereto, may make such report. (Amendment approved April 21, 1909. Statutes 1909, p. 1038.)

Assessment of damages. Findings.

Sec. 10. For the purpose of assessing the compensation and damages, the right thereto shall be deemed to have accrued at the date of the issuance of summons, and its actual value at that date shall be the measure of compensation for all property to be actually taken, and the basis of damages to property not actually taken, but injuriously affected, in all cases where such damages are allowed by the provisions of this act, *provided*, that in any case in which the issue is not tried within one year after the date of the commencement of the action, unless the delay is caused by the defendant, the compensation and damages shall be deemed to have accrued at the date of trial.

If an order be made letting the plaintiff into immediate possession and the plaintiff shall take immediate possession upon commencing eminent domain proceedings and thereupon giving such security in the way of money deposits as the court may determine to be reasonably adequate to secure compensation to the owner, as provided in section fourteen of article one of the constitution, then the compensation and damages awarded shall draw interest at the rate of seven per cent per annum from the date of such order.

No improvements placed upon the property proposed to be taken, subsequent to the date of the publication of the notice of the passage of the ordinance of intention, or subsequent to the date of the filing of a notice of the pendency of an action brought for the condemnation of such property, shall be included in the assessment of compensation or damages.

The referees, or Court, or jury, as the case may be, shall find separately:

First—The value of each parcel of property sought to be condemned, and all improvements thereon pertaining to the realty, and of each separate estate or interest therein;

Second—If any parcel of property sought to be condemned is only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned, and to each separate estate or interest therein, by reason of its severance from the portion sought to be condemned, and the construction of the improvement in the manner proposed by the plaintiff. Such damages must be fixed irrespective of any benefit from such improvement. (Amended Statutes 1925, Chap. 104.)

Hearing of referees' report. Exceptions. Notice of hearing. Intervention. Notice of trial. Postponement.

Sec. 11. Upon the filing of such report the court must, upon motion of any party, appoint a day for hearing the same, not less than twenty days thereafter. Notice of the time and place of said hearing must, at least ten days before the time so appointed, be served on all the other parties, except defendants whose default has been entered. The plaintiff, or any defendant who has answered, may file exceptions in writing to said report, specifying the grounds upon which such exceptions are based, at any time within not less than one day prior to the hearing; and any such party so filing exceptions to said report, may appear at the hearing of said report and contest the same. In addition to the notice hereinbefore provided, the clerk of the court must give notice of the filing of said report, and of the time and place appointed for the hearing of the same, to all persons owning or having an interest in any property included within the assessment district for said improvement described in the ordinance of intention, by causing said notice last mentioned to be published for five days in a daily newspaper published and circulated in the city; and, if there be no such daily newspaper, then by two insertions in a weekly newspaper so published and circulated. Any publication of such notice shall commence at least ten days before the time appointed for the hearing of the report. Said notice shall require all persons owning or having an interest in any property included within said assessment district for said improvement to intervene in said action, and file, in the office of the clerk of said court, his exceptions in writing to said report, if any he has, specifying the grounds upon which such exceptions are based. Said notice shall also contain a description of the said assessment district as set forth in the ordinance of intention. At any time within not less than one day prior to the hearing, any person not a party to the action, owning or having an interest in any property included within said assessment district may intervene in the action, and file his exceptions in writing to said report,

specifying the grounds upon which such exceptions are based; and any such person so intervening may appear and contest the said report, and introduce evidence in support of such exceptions. After hearing the report, and any exceptions thereto, the court may confirm the report, or may modify it and confirm it as modified, or may set it aside and order a new report from the same referees, or from new referees to be appointed. If new referees are appointed, the same proceedings shall be had as upon the first reference.

If there be a trial of the action by a jury, or by the court without a jury, the clerk of the court must give notice of the time and place of such trial to all persons owning or having an interest in any property within said assessment district for said improvement. Said notice shall be published in the same manner and for the same time as the notice hereinbefore in this section required to be given by said clerk, and shall require all persons owning or having an interest in any property included within said assessment district for said improvement, to intervene in said action, and to appear at the trial thereof and introduce evidence relative to the compensation and damages to be awarded to the defendants therein. At any time within not less than one day prior to the trial, any person not a party to the action, having an interest in any property included within said assessment district, may intervene in the action, and, upon the trial thereof, may appear and introduce evidence relative to the compensation and damages to be awarded to the defendants therein. The cost of the publication of the notices required by this section shall be paid by the plaintiff, and allowed as costs in the action.

When a time has been appointed for hearing the report of the referees, or for the trial of the action, and notice thereof has been given by the clerk by publication as in this section provided, if the hearing or trial be postponed or continued by the court to any subsequent date, no such notice need be given by the clerk of the hearing or trial upon any such postponement or continuance. (Amendment approved April 21, 1909. Statutes 1909, p. 1039.)

Confirmation of report. Interlocutory judgment. Compensation of referees.

Sec. 12. Upon the confirmation of the report of the referees, or receipt of the verdict of the jury, or the filing of the findings of the court, the court shall make and enter an interlocutory judgment in accordance with such report, verdict or findings, adjudging that upon payment to the respective parties, or into court for their benefit, of the several amounts found due them as compensation, and of the costs allowed to them, the property involved in the action shall be condemned to the use of the plaintiff, and dedicated to the use specified in the complaint. The court shall allow to the referees, as costs to be paid by the plaintiff, a reasonable compensation for their services, the amount of which compensation shall be fixed by the court upon the hearing of the report, and their necessary expenses. (Amendment approved April 21, 1909. Statutes 1909, p. 1040.)

Appeal.

Sec. 13. An appeal may be taken from such interlocutory judgment within thirty days from the entry thereof, and from any order granting or denying a new trial within ten days after the entry thereof.

Abandonment of proceedings.

Sec. 14. The city council may, at any time prior to the payment of the compensation awarded the defendants, abandon the proceedings, by ordinance, and cause the said action to be dismissed, without prejudice; and if any of the assessments levied to pay the expense of the improvements, as hereinafter provided, shall have been actually paid in money at the time of such abandonment, the same shall be refunded to the persons by whom they were paid. If the proceedings be abandoned or the action dismissed no attorney's fees shall be awarded the defendants or either or any of them. (Amendment approved April 12, 1911. Statutes 1911, p. 894. Also amended in 1909. Statutes 1909, p. 1040.)

See note after Sec. 37.

Diagram of improvement.

Sec. 15. Upon the entry of the interlocutory judgment, the city council shall order the city engineer, or if there be no city engineer, any civil engineer whom it may employ for that purpose, to make and deliver to the street superintendent, a diagram of the improvement and of the property within the assessment district described in the ordinance of intention. Said diagram shall show the land to be taken for the proposed improvement, and also each separate lot, piece or parcel of land within the assessment district, and the dimensions of each such lot, piece, or parcel of land, and the relative location of the same to the proposed improvement.

Delivery of diagram. Completed assessment.

Sec. 16. The city engineer shall deliver said diagram to the street superintendent and shall indorse thereon the date of such delivery. The street superintendent upon receiving the said diagram shall proceed to assess the total expenses of the proposed improvement (first deducting from such total expenses such percentage thereof or sum toward the expense of said improvement, if any, as the city council may have declared by the ordinance of intention that the city shall pay) upon and against the lands, including the property of any railroad or street railroad, within said assessment district, except the land to be taken for such improvement, in proportion to the benefits to be derived from said improvement. The street superintendent shall complete said assessment within sixty days after the receipt by him of said diagram; *provided, however*, that the city council may by order extend the time for completing said assessment for a period not exceeding ninety days additional. The total expense of the improvements so to be assessed shall include the amounts awarded to the defendants by the interlocutory judgment in the action for condemnation, together with their costs, the compensation and expenses of the referees, as allowed by the court, and all other

costs of the plaintiff in such action, the expenses of making the assessment, and all expenses necessarily incurred by said city, in connection with the proposed improvement for the publication of ordinances, posting and publication of notices, for maps, diagrams, plans, surveys, searches and certificates of title to the property to be taken, and all other matters incident thereto.

Whenever any lot, piece or parcel of land belonging to the United States, or to the State of California, or any lot, piece or parcel of land belonging to any county, city, public agent, mandatory of the government, school board, educational, penal or reform institution, or institution for the feeble-minded, or the insane, and being in use in the performance of any public function, is included within the district declared by the city council in the ordinance of intention to be the district to be benefited by said improvement, and to be assessed to pay the expense thereof, the city council may, in its discretion, in the ordinance of intention, declare that said lots, pieces or parcels of land, so owned and in use, or any of them, shall be omitted from the assessment to be made to cover the expense of said improvement. In the event that said lots, pieces or parcels of land, or any of them, shall by said ordinance be omitted from the assessment, then the total expenses of said improvement shall be assessed on the remaining lots lying within the boundaries of said assessment district, without regard to such omitted lots, pieces or parcels of land. In the event the city council shall, in its ordinance of intention, declare that the said lots, pieces or parcels of land, so owned and in use, or any of them, shall be included within the assessment, or in the event that no declaration is made respecting such lots, pieces or parcels of land, then such sum or sums as thereafter may be assessed against such lots, pieces or parcels of land so owned and used, shall be payable by the city out of the general fund, unless the city council shall in its ordinance of intention designate another fund; *provided, however*, that any such sum or sums which may be assessed against any such lots, pieces or parcels of land, so owned and used, shall not be payable by the city when such sum or sums are paid by the owner of or the governing body controlling such lots, pieces or parcels of land. (Amended, Statutes 1925, Chap. 104.)

Assessment, how made and what to show.

Sec. 17. The street superintendent shall make the said assessment in writing. Such assessment shall describe each lot, piece, or parcel of land assessed for said improvement, and shall designate each such lot, piece, or parcel of land with an appropriate number. The street superintendent shall also designate each such lot, piece, or parcel of land on said diagram, with the number corresponding with the number thereof in said assessment, and said diagram shall thereupon be attached to and become and be deemed to be a part of said assessment. Such assessment shall show the total sum to be raised thereby, as hereinbefore provided, and also the items of such total sum, and opposite each lot, piece, or parcel of land assessed, the amount assessed thereon, and the name of the owner thereof, if known to the street superintendent; or if the owner's name is unknown, the word "Unknown" shall be written instead of such name. Any error or mistake in the designa-

tion of the owner of any lot, piece, or parcel of land, or in the particulars of his interest therein, shall not affect the validity of the assessment.

Notice of filing of assessment.

Sec. 18. As soon as said assessment is completed the street superintendent shall file the same, with the diagram attached thereto and made a part thereof as aforesaid, with the clerk of the council, who shall give notice of such filing by publication for at least ten days in a daily newspaper published and circulated in the city, or if there be no such daily newspaper, by three successive insertions in a weekly newspaper so published and circulated. Said notice shall require all persons interested to file with said clerk their objections, if any they have, to the confirmation of said assessment, within thirty days after the date of the first publication of such notice, which date shall be stated in said notice.

Objections.

Sec. 19. All objections shall be in writing and shall be filed with said clerk within the time prescribed in the notice required by section 18 hereof. The clerk shall, at the next regular meeting of the city council after the expiration of the time for filing objections, lay said assessment and all objections so filed with him, before the council; and said council shall hear all such objections at said meeting, or at any other time to which the hearing thereof may be adjourned, and pass upon such assessment, and may confirm, modify, or correct said assessment, or may order a new assessment, upon which like proceedings shall be had, as in the case of an original assessment; or if there be no objections, the council shall, at any regular meeting after the expiration of the time for filing objections, confirm such assessment, and the action of the council upon such objections and assessment shall be final and conclusive in the premises.

Record of assessment.

Sec. 20. The clerk of the council shall thereupon deliver to the street superintendent the assessment as confirmed by the city council, with his certificate of such confirmation, and of the date thereof. The street superintendent shall thereupon record such assessment and diagram in his office, in a suitable book to be kept for that purpose, and append thereto his certificate of the date of such recording, and such record shall be the assessment-roll. From the date of such recording all persons shall be deemed to have notice of the contents of such assessment-roll. Immediately upon such recording, the several assessments contained in such assessment-roll shall become due and payable, and each of such assessments shall be a lien upon the property against which it is made.

Payment by offset.

Sec. 21. The owner of any property assessed, who is entitled to compensation under the award made by the interlocutory judgment, may, at any time after such assessment becomes payable, and before the sale of said property for nonpayment thereof, as hereinafter provided, demand of the street superintendent that such assessment, or any number of such assess-

ments, be offset against the amount to which he is entitled under said judgment. Thereupon, if said amount is equal to or greater than such assessments, including any penalties and costs due thereon, the assessments shall be marked "Paid by offset"; and if the said amount is less than the assessments, and any penalties and costs due thereon, the person demanding such offset shall at the same time pay the difference to the street superintendent in money, and the assessments shall, on such payment, be marked paid, the entry showing what part thereof is paid by offset and what part in money. In either case, as a condition of the offset, such person must execute to the city and deliver to the street superintendent duplicate receipts for such part of the amount due him under said interlocutory judgment as is offset against such assessments, penalties, and costs. One of said duplicate receipts shall be filed by the street superintendent in his office, the other shall be filed with the clerk of the superior court, and on such filing, the city shall be entitled to a satisfaction pro tanto of said interlocutory judgment.

Notice to pay. Delinquency.

Sec. 22. The street superintendent shall, upon the recording of said assessment, give notice, by publication for ten days in a daily newspaper, published and circulated in such municipality, or by three successive insertions in a weekly newspaper, so published and so circulated, that said assessment has been recorded in his office, and that all sums assessed therein are due and payable immediately, and that the payment of the said sums is to be made to him within thirty days after the date of the first publication, which date shall be stated in the notice. Said notice shall also contain a statement that all assessments not paid before the expiration of said thirty days will become delinquent, and that thereupon five per cent upon the amount of each such assessment will be added thereto. When payment for any assessment is made, the street superintendent shall mark opposite such assessment, the word, "Paid," the date of payment, and the name of the person by or for whom the same is paid, and shall, if so requested, give receipt therefor. On the expiration of said period of thirty days, all assessments then unpaid shall become delinquent, and the street superintendent shall certify such fact at the foot of said assessment-roll, and mark each such assessment "Delinquent," and add five per cent to the amount of each assessment delinquent.

Delinquent assessment. Notice. Sale.

Sec. 23. The street superintendent shall, within ten days from the date of such delinquency, begin the publication of a list of the delinquent assessments, which list must contain a description of each parcel of property delinquent, and opposite or against each description, the name of the owner as stated in the assessment-roll, and the amount of the assessment, penalty, and costs due, including the cost of advertising, which last shall not exceed the sum of fifty cents for each lot, piece, or parcel of land, separately assessed. The street superintendent shall append to and publish with said delinquent list a notice that unless each assessment delinquent, together with the penalty and costs thereon, is paid, the property upon which such assessment is a lien, will be sold at public auction at a time and place to be

specified in the notice. The publication must be made for a period of ten days, in some daily newspaper published and circulated in the municipality, or for three weeks in a weekly newspaper so published and circulated. The time of sale must not be less than five days, nor more than ten days, after the expiration of the period of publication of said list, and the place of sale must be in, or in front of, the office of the street superintendent.

Payment may be made prior to sale.

Sec. 24. At any time after such delinquency, and prior to the sale of any piece of property assessed and delinquent, any person may pay the assessment on such piece of property, together with the penalty, and costs then due, including the cost of advertising, if such payment is made after the first publication of the list of delinquent assessments. The street superintendent shall thereupon mark such assessment "Paid," as hereinbefore provided.

Delinquent sale.

Sec. 25. On the day fixed for the sale, the street superintendent must, at the hour of 10 o'clock A. M. commence the sale of the property advertised, commencing at the head of the list, and continuing in numerical order of lots or parcels of land until all are sold; provided, that he may postpone or continue the sale from day to day until all the property is sold. Each lot, piece or parcel of land separately assessed must be offered for sale separately, and the person who will take the least quantity of land, and then and there pay the amount of the assessment, penalty, and costs due, including fifty cents to the street superintendent for a certificate of sale, shall become the purchaser. In case there is no purchaser, for any lot, piece or parcel of land so offered for sale, the same shall be struck off to the municipality, as purchaser, and the city council shall appropriate out of the general fund of the treasury, the amount required for such purchase, and shall order the city treasurer to place the same in the special fund for such improvement. No charge shall be made for the certificate of sale when the municipality is the purchaser.

Certificate of sale.

Sec. 26. After making the sale, the street superintendent must execute, in duplicate, a certificate of sale setting forth a description of the property sold, the name of the owner thereof, as given on the assessment-roll, that said property was sold for a delinquent assessment, (specifying the improvement for which the same was made), the amount for which such property was sold, the date of sale, the name of the purchaser, and the time when the purchaser will be entitled to a deed. The street superintendent must file one copy of such certificate in his office, and deliver the other to the purchaser, or if the municipality is the purchaser, to the clerk of the council, who shall file the same in his office. On the filing of the copy of such certificate in the office of the street superintendent, the lien of the assessment shall vest in the purchaser, and is only divested by a redemption of the property, as in this act provided. The street superintendent shall also enter on the assessment-roll, opposite the description of each piece of property offered for sale, a descrip-

tion of the part thereof sold, the amount for which the same was sold the date of the sale, and the name of the purchaser.

New assessment may be made when first one is declared invalid. Court required to point out defects. New assessment ordered. Procedure. Re-assessment based on benefits. Cost payable by land benefited.

Sec. 26a. Whenever any assessment made and issued under the provisions of this act, or whenever any bond or bonds issued to represent the amount of any such assessment in accordance with the provisions of "An act providing for the issuance of improvement bonds to represent certain special assessments for public improvements, and providing for the effect and enforcement of such bonds," approved April 27, 1911, and all acts supplementary thereto or amendatory thereof, have been set aside by any court of competent jurisdiction, or such court has refused to enforce any assessment, or has decreed any such bond or bonds issued under the above-mentioned statute, approved April 27, 1911, not to constitute valid and subsisting liens against the lots, pieces or parcels of land upon which the assessments represented by them have been levied, then the superintendent of streets shall cause a new assessment to be made for the same purpose for which the former assessment was made, whether any of the assessments have been paid or not, and new bonds shall in regular course thereafter issue in the event that bonds were issued under or provided for in the original assessment. It is hereby made the duty of any court of competent jurisdiction in rendering its judgment holding invalid any assessment or assessments hereafter made or issued, or of any bond or bonds hereafter made or issued to represent the amount or amounts of any such assessment, to make a finding as to whether or not the issuing of such assesment was entirely without the power of the said city to issue, and if not, then what omission, irregularity, illegality, informality or noncompliance with the requirements of the statutes of which this is amendatory has occurred in the proceedings upon which said assessment or assessments and bonds rest, and what effect shall be given to them in making the reassessment. In the event that the court shall find that the improvement, the expenses of which are represented by said assessment or bonds, was commenced in good faith and carried on pursuant to an ordinance or resolution of the city council providing for such improvement to be paid for by a special assessment, it shall be the duty of the said court to order the making of a new assessment. The city council may, at the request of any interested party, or on its own motion, by resolution duly passed, set aside any assessment or assessments and bonds, as the case may be, and order a new assessment or assessments and bonds, to be made and issued without any decree having been obtained of or from any court regarding said matter, if in its opinion the assessment be invalid, and it may take all necessary steps and make and pass all necessary orders, resolutions or ordinances to reassess and relevy such assessment, and may reassess and relevy the same with the same force and effect as an original levy. Such reassessment, whether made after decree of court has been rendered, or pursuant to a resolution of the council, shall be based upon the special and peculiar benefit of the proposed improvement to the respective

lots, pieces or parcels of land assessed. The total amount of the reassessment shall not exceed the total amount of the original assessment. Such reassessment so made shall become a charge upon the property upon which the same is levied, notwithstanding any omission, failure or neglect of any officer, body or person to comply with the provisions of this statute, and notwithstanding the fact that the proceedings of the city council, board of public works or any officer of the city or other person connected with such proceedings, may have been irregular, illegal, informal, or defective, or not in full conformity with the requirements of this statute. It is hereby declared to be the true intent and meaning of this section to make the cost and expense of all local improvements actually made or proposed to be made in the attempted exercise of the powers conferred upon municipalities under this statute, payable by the real estate benefited or to be benefited by such improvements by making a reassessment therefor which shall be equitably proportioned to each lot, each piece or parcel of land thereby benefited the amount of the actual benefits derived or to be derived from said improvement, notwithstanding that the proceedings of the city council or other officers or agents of the city, or other persons connected therewith may have been irregular, illegal or defective, or not in full conformity with the requirements of this statute. Such reassessment shall be made without a repetition of the proceedings had prior to the issuance of the assessment and shall be made and issued in the following manner: The superintendent of streets shall, upon the entering of a decree of court directing the reassessment, or upon the passage of a resolution of the city council directing a reassessment, proceed at once to make a reassessment in accordance with the said decree of court, or said resolution of the city council. Such reassessment shall be made upon the district described in the ordinance of intention for said improvement, and in the event that there shall have been informalities, uncertainties or ambiguities in the description of the limits of said district, then upon the district which the court or council shall find to be that actually benefited by said improvement, but in so finding said court or council shall follow the lines described in the ordinance of intention so far as the same can be ascertained, and in all cases of uncertainty or ambiguity they shall give regard to the lines described and make such a determination as to the lines where there is any uncertainty or ambiguity in the ordinance of intention as may be just and equitable. In the event that a portion of the improvement has been found to be entirely without the power of said city to order, then said assessment shall be for the remainder of the improvement only, and the benefits arising from the improvement entirely without the jurisdiction of the city to order shall not be considered in making the reassessment. Upon the completion of the reassessment it shall be presented to the city council and a day of hearing shall be fixed by it which shall be at least twenty (20) days after the filing of the reassessment. The city clerk shall then advertise the fact of filing by publishing a notice in the official newspaper, or in such other paper as the council may direct, by five (5) insertions if the paper be a daily, or by two (2) insertions if it be a weekly or semi-weekly newspaper, stating the fact that the reassessment has been filed with him and that objections to said reassessment will be heard at the

time specified by the city council. At the time fixed for such hearing, or at such time or times to which the same may be thereafter adjourned, the city council shall consider the objections to said reassessment and in its discretion revise, correct and modify such reassessment in such manner as is most equitable, and it shall thereupon pass a resolution approving and confirming such reassessment and such decision shall be a final determination of all matters relating to the actual benefits derived or to be derived from the improvement by the respective lots, pieces and parcels of land enumerated in the reassessment. Said reassessment shall thereupon be recorded by the street superintendent and it shall in all respects have the same effect and weight as the original assessment, and shall be enforced in the same manner. All payments made upon the original assessment shall be credited upon the reassessment and in the event that the reassessment in any instance is less than the amount of the original assessment, the excess shall be payable to the persons who paid the original assessments. (New section approved June 10, 1913. Statutes 1913, p. 433.)

Redemption.

Sec. 27. A redemption of any parcel of property sold for delinquent assessment may be made by any party in interest, at any time prior to the execution and delivery of a deed therefor, by paying to the street superintendent the amount for which the property was sold, and in addition thereto, ten per cent thereon if paid within three months from the date of sale; twenty per cent if paid within six months; thirty per cent if paid within nine months; forty per cent if paid within twelve months, or fifty per cent if paid at any time after twelve months. When redemption is made, the street superintendent shall note that fact on the duplicate certificate of sale on file in his office, and deposit the amount paid with the city treasurer, who shall credit the purchaser named in the certificate of sale with the said amount, and pay the same to such purchaser, or his assignee, upon the surrender of the certificate of sale, and upon satisfactory proof of assignment thereof, if any. When the municipality is the purchaser, the treasurer shall notify the clerk of the council of the redemption, and such clerk shall thereupon cancel the certificate of sale on file in his office.

Deed, when executed. Cost. Service of notice. Redemption.

Sec. 28. At any time after the expiration of twelve months from the date of sale, the street superintendent must execute to the purchaser, or his assignee on his application, if such purchaser or assignee has complied with the provisions of this section, a deed of the property sold, in which shall be recited substantially the matters contained in the certificate, also any assignment thereof and the fact that no person has redeemed the property. The street superintendent shall receive from the applicant for a deed, one dollar for making such deed, unless the municipality is the purchaser, in which case no charge shall be made therefor. The purchaser or his assignee must, at least thirty days before he applies for a deed, serve upon the owner of the property, and upon the occupant of such property, if the same is occupied, a written notice, setting forth a description of the property, that said property has been sold for a delinquent assessment (specifying the improve-

ment for which the same was made), the amount for which it was sold, the amount necessary to redeem at the time of giving notice, and the time when such purchaser or assignee will apply to the street superintendent for a deed. If the said owner cannot be found, after due diligence, said notice must be posted in a conspicuous place upon said property, at least thirty days before the time stated therein, at which the application for a deed will be made. The person applying for a deed must file with the street superintendent an affidavit or affidavits showing that notice of such application has been given, as herein required, and if the notice was not served on the owner of the property personally, that due diligence was used to find said owner; which affidavit or affidavits must be filed by the street superintendent in his office. If redemption of the property is made after such affidavits are filed, and more than eleven months from the date of sale, the person making such redemption must pay, in addition to the other amounts required, three dollars for the service of notice and the making of such affidavits, which amount shall be paid over to the purchaser or his assignee in the same manner as other sums paid for redemption. No deed for any property sold for delinquent assessment shall be made until the purchaser or his assignee has complied with all the provisions of this section, and filed the proper affidavits with the street superintendent.

Deed is prima facie regular.

Sec. 29. The deed of the street superintendent shall be prima facie evidence of the truth of all matters recited therein, and of the regularity of all proceedings prior to the execution thereof, and of title in the grantee.

Receipts paid into special fund.

Sec. 30. The street superintendent shall from time to time pay over to the city treasurer all moneys collected by him on account of any assessment made under the provisions of this act. The city treasurer shall, on receipt thereof, place the same in a special fund, designating such fund by the name of the improvement for which the assessment was made. The city council shall on or before the time when said assessments become delinquent, cause to be transferred from the general or other appropriate fund of the city to said special fund the percentage of, or the sum toward the total expense of such improvement to be paid by the city as and when so provided in the ordinance of intention. (Amended, Statutes 1925, Chap. 104.)

Payment of awards. Final judgment.

Sec. 31. As soon as there is sufficient money in the hands of the city treasurer, in the special fund devoted to the proposed improvement, to pay the amounts awarded to the defendants by the interlocutory judgment in the action of condemnation, or such parts thereof as have not been paid by offset against assessments, as hereinbefore provided, the said amounts shall be paid to the parties entitled thereto, or into court for their benefit. On satisfactory proof being made to the court of payment of the amounts awarded by the interlocutory judgment to the respective parties entitled thereto, or into court for their benefit, it shall direct the interlocutory judgment to be satisfied, and shall make and enter a final judgment, condemning

the lands described in the complaint to the use of the plaintiff for the purposes specified in such complaint.

Proceedings in case of a deficiency.

Sec. 32. In case of a deficiency in the fund for such improvement, the city council, in its discretion, may provide for such deficiency by an appropriation out of the general fund of the treasury, or by ordering a supplementary assessment to be made by the street superintendent upon the property in said assessment district in the same manner and form, and subject to the same procedure as the original assessment, and in the last named case, in order to avoid delay, the city council may advance such deficiency out of the city treasury and reimburse the treasury from the collections under such supplementary assessment. In case of a surplus in the fund for such improvement, the city council may order such surplus refunded pro rata to the parties who paid the assessments.

Definitions.

Sec. 33. The following words and phrases shall, where used in this act, have the following meanings:

(1) The term "improvement" includes all of the improvements mentioned in section 1 of this act.

(2) The terms "municipality" and "city" include all incorporated cities, cities and counties, and other corporations organized for municipal purposes.

(3) The terms "city council" and "council" include any body or board in which by law is vested the legislative power of any municipality.

(4) The terms "clerk" and "city clerk" include any person or officer who acts as clerk of said city council.

(5) The terms "treasurer" and "city treasurer" include any person or officer who has charge and makes payment of the city funds.

(6) The term "street superintendent" includes any officer or board whose duty it is by law to have the care or charge of streets, or the improvement thereof, in any city. In any city where there is no street superintendent, or no such board, the city council thereof is hereby authorized to appoint a suitable person to perform the duties imposed by this act on the street superintendent, and all the provisions hereof applicable to the street superintendent shall apply to the person so appointed.

(7) The terms "owner" and "any person interested" include the person owning the fee, or the person in whom, on the day any protest or petition is filed, the legal title to real property appears, by deeds duly recorded in the county recorder's office of the county in which said city is situated, or any person in possession of real property, as the executor, administrator, trustee under an express trust, guardian or other legal representative of the owner, or any person in possession of real property under a written contract of purchase thereof duly recorded, or any person in possession of real property, as lessee thereof under a lease duly recorded, which shall require such lessee to pay or discharge all assessments for street or other public improvements, that may be levied or assessed against such real property.

(8) The term "property of any railroad or street railroad" shall be deemed to include and shall include property owned or controlled by any person, firm or corporation, as a railroad, street railroad or interurban railroad right of way whether such right of way be owned or controlled in fee or as an easement or by virtue of a franchise or otherwise, also the road-bed, ties and rails located on such right of way; and such property shall be assessed and the assessment thereof enforced in the same manner and to the same effect as other lands and property in the assessment district. (Amendment approved April 10, 1911. Statutes 1911, p. 855. Also amended in 1909. Statutes 1909, p. 1041.)

Description by reference sufficient.

Sec. 33a. In all resolutions, notices, orders and determinations subsequent to the ordinance of intention, a description of the assessment district by reference to the ordinance of intention shall be sufficient, and in all resolutions, notices, orders, and determinations subsequent to the "notice of street work" a description of the work by reference to the ordinance of intention shall be sufficient. (New section approved June 10, 1913. Statutes 1913, p. 436.)

When no paper in city, notices may be published.

Sec. 34. In case there is no daily or weekly newspaper published and circulated in the city, then such notices and delinquent lists as are herein required to be published in a newspaper shall be posted in three of the most public places in such city, for the length of time required herein for the publication of the same in a weekly newspaper. No publication or notice other than that provided in this act shall be necessary to give validity to any proceedings had thereunder.

Proof of publication and notice.

Sec. 35. Proof of publication of any notice required by this act shall be made by affidavit, as provided in the Code of Civil Procedure, and proof of the posting of any such notice shall be made by the affidavit of the person posting the same, setting forth the facts regarding such posting. It shall be the duty of any officer who is required by this act to have any notice published or posted, to obtain and file in his office the affidavit or affidavits in proof thereof; provided that his failure so to do shall not affect the validity of any proceedings under this act. Any such affidavit so filed shall be prima facie evidence of the facts therein stated regarding such publication or posting.

Act of 1889 not affected. Alternative system of proceedings.

Sec. 36. This act shall in no wise affect an act entitled, "An act to provide for laying out, opening, extending, widening, straightening, or closing up, in whole or in part, any street, square, lane, alley, court, or place within municipalities, and to condemn and acquire any and all and and property necessary or convenient for that purpose," approved March 6, 1889, or amendments thereto, or any other acts on the same subject, or apply to proceedings had thereunder, but it is intended to and does provide an al-

ternate system of proceedings for making the improvements provided for by this act; and it shall be within the discretion of the city council or any municipality to proceed in making such improvements, either under the provisions of this act, or under the provisions of such other acts; but when any proceedings are commenced under this act, the provisions of this act, and of such amendments thereof as may be hereafter adopted, and no other, shall apply to all such proceedings, and any provisions contained in said acts or any acts in conflict with the provisions hereof shall be void and of no effect as to the proceedings commenced under the provisions of this act. The election of the city council to proceed under the provisions of this act shall be expressed in its ordinance of intention to order the work done.

Act shall be liberally construed.

Sec. 37. The provisions of this act shall be liberally construed to promote the objects thereof. This act may be designated and referred to as the "Street Opening Act of 1903," and shall take effect and be in force upon its passage and approval.

The amendatory act of April 21, 1909, contained also the following: "Sec. 11. Any proceeding or action for any improvement, such as is provided for in this act, or in said act to which this act is amendatory, already commenced and pending at the time this act takes effect, under or by virtue of any ordinance of intention theretofore passed, shall, from the stage of any such proceeding or action already commenced and in progress at the time this act takes effect, be continued under the provisions of this act. Any such proceeding or action shall then be continued and conducted under the provisions of this act, with full force and effect in all respects from the stage of such proceeding or action at and from the taking effect of this act; and from the taking effect of this act all proceedings theretofore had for any such improvement, and all proceedings theretofore had or taken in any such action, are hereby ratified, confirmed, and made valid, and it shall not be necessary to renew or conduct over again any such proceedings or actions, commenced prior to the taking effect of this act."

The amendatory act of April 12, 1911, contained the following provision:

Sec. 2. The provisions of this act shall not apply to or affect any proceedings taken under the act to which this act is amendatory, and pending at the time this act takes effect, and in which the interlocutory judgment has been entered.

STREET OPENING BOND ACT OF 1911

An act providing for the issuance of improvement bonds to represent certain special assessments for public improvements, and providing for the effect and enforcement of such bonds.

(Approved April 27, 1911. Statutes 1911, p. 1192.)

“Street opening act of 1903.” “Park act.” “Street improvement act of 1909.”
“Improvement bond.” “Assessment.” “Delinquency.” “City council.”

Sec. 1. The expression “street opening act of 1903” as herein used shall mean the act entitled “An act to provide for the laying out, opening, extending, widening, or straightening, in whole or in part, of public streets, squares, lanes, alleys, courts, and places within municipalities, for the condemnation of property necessary or convenient for such purposes, and for the establishment of assessment districts and the assessment of property therein to pay the expenses of such improvement,” approved March 24, 1903 (Statutes 1903, p. 376), and acts amendatory thereto.

The expression “park act” as herein used shall mean the act entitled “An act to provide for the acquisition by municipalities of land for public park or playground purposes by condemnation, and for the establishment of assessment districts and the assessment of property therein to pay the expense of acquiring such land,” approved April 22, 1909 (Statutes 1909, p. 1066.)

The expression “street improvement act of 1909” as herein used shall mean the act entitled “An act to provide for the improvement of public streets, lanes, alleys, courts and places in municipalities, in cases where any damage to private property would result from such improvement, and for the assessment of the costs, damages, and expenses thereof upon the property benefited thereby,” approved April 21, 1909 (Statutes 1909, p. 1042.)

The expression “improvement bond” as herein used shall mean a bond issue under the provisions of this act.

The terms “assessment” or “assessment-roll” as herein used shall mean a special assessment made under the provisions of any of the acts herein in this section specified.

The term “delinquency” as herein used shall mean delinquency in the payment of an assessment made under the provisions of the acts herein in this section specified and the expression “time of delinquency” shall mean the time in said acts fixed when assessments become delinquent. The expression “city council” as herein used shall mean the legislative body of the municipality.

Council may determine the issue of improvement bonds.

Sec. 2. City council of any municipal corporation of this state may, in its discretion, at or before the time of the confirmation of any assessment or

assessment-roll in proceedings had and taken under the street opening act of 1903, the park act or under any act which may hereafter become a law, providing for the acquiring of property, easements and rights of way necessary or convenient for the construction of sewers and drains by municipalities for sanitary or drainage purposes, determine that improvement bonds may issue to represent such assessments, which determination shall be made by resolution or ordinance. (Amendment approved May 23, 1921. Statutes 1921, p. 291.)

Owner of lot may elect to pay assessment in installments.

Sec. 3. Whenever it is determined, as provided in section 2 hereof, that improvement bonds may be issued to represent assessments, the owner of any lot or parcel of land against which an assessment has been made, when the amount of such assessment is fifty (\$50) dollars or over, may, at any time prior to delinquency, elect to pay such assessment in installments and to have an improvement bond issued against said lot or parcel of land in the form and manner and with the effect in this act provided. (Amendment approved May 23, 1921. Statutes 1921, p. 291.)

Election to be made in writing. Rate of interest. Form of agreement. Records of assessment. Improvement bond. Mistake in description.

Sec. 4. Such election shall be made by such owner or his agent thereunto duly authorized in writing filed with the superintendent of streets, or if said assessment is in the custody of the city tax collector with such tax collector, an affidavit made before a competent officer that he or his principal, as the case may be, is the owner of the lot or parcel of land in question, which affidavit must be accompanied by a certificate of a searcher of records, that he or his principal is such owner and also by filing with such officer a written agreement upon the form hereinafter fixed, waiving all objections of whatsoever kind or nature against the assessment and all proceedings thereto and undertaking to pay the amount of such assessment in either five or ten annual installments, each of which shall be due on the first day of July of each year, and the first of which shall be due on the first day of July next following the date of such bond, with interest on all deferred payments at the rate of seven per cent per annum, payable at the same time as the installments of principal. Said agreement shall contain a provision to the effect that in case of default in the payment of any installment of the principal provided for therein, or interest accrued on deferred payments, at the time called for by said agreement, then and in that event, the entire remaining unpaid installments shall become immediately due and payable, and that the same, and all liens and agreements which are security therefor, may be collected and enforced as in this act provided. Said agreement shall be in the following or substantially the following form (filling blanks):

The undersigned, being the owner of the lot assessed in the assessment for said lot being assessed therein for the sum of..... (\$.....) dollars, does hereby expressly waive and release all objections of whatsoever kind or nature against the said assessment and all proceedings prior thereto, and in consideration of the benefit of said improvement and of the

extension of time for paying therefor herein requested, do undertake and agree to pay the amount of said assessment, to-wit: the sum of (\$) dollars in yearly installments, at the time, in the manner, and with the interest, specified and provided in (title of act), and do request and elect to have a bond issued against said lot in the manner and form and with the effect provided in said act, and do expressly agree that in the case of default in the payment of any installment of the principal provided for in said bond, or interest accrued on deferred payments, then, and in that event, that the entire remaining unpaid installments shall become immediately due and payable, and that the same, and all liens and agreements which are security therefor, may be collected and enforced as in this act provided.

Upon an election being effected as herein provided the superintendent of streets, or other officer having in his custody said assessment, shall make a note thereof in his records opposite the assessment as to which such election is made. All agreements and affidavits made and filed hereunder shall be bound in a substantial book and kept among the records of the superintendent of streets, or other officer having the custody of such assessments. At the time of delinquency, such officer shall advise, in writing, the city treasurer respecting the assessments as to which the owners have elected to pay in installments. The city treasurer shall thereupon prepare a separate bond representing each assessment as to which such right of election has been exercised, running for either five (5) or ten (10) years, as specified in the agreement made as herein provided, which bond shall be in the following or substantially the following form (filling blanks):

Improvement Bond.

Series

\$

No.

Under and by virtue of and pursuant to the provisions of (title of act), I, out of the fund for the above designated improvement bonds, series will pay to bearer the sum of (\$) dollars with interest at the rate of seven (7) per cent per annum, as is hereinafter specified, at the office of the city treasurer of the city of , state of California. This bond is issued to represent an assessment for in the city of as the same is more fully described in the assessment therefor. Its amount is the amount assessed in said assessment against the lot numbered therein and in the diagram attached thereto, and which now remains unpaid; but until paid, with accrued interest, is a first lien upon the property affected thereby, as the same is described herein and in said recorded assessment with its diagram, to-wit: the lot or parcel of land in the city of , county of , state of California, described as follows:

and it is issued in accordance with the written request therefor on file in the office of the of said city.

This bond is payable exclusively from said fund, and neither the city

of nor any officer thereof is to be holden otherwise for its principal or interest. The term of this bond is years from July first, 19. . . , and at the expiration of said time the whole sum then unpaid shall be due and payable; but on the first day of July of each year, after the date hereof, an even annual proportion of its principal is due and payable upon presentation of the coupon therefor, until the whole is paid, with accrued interest at the rate of seven (7) per cent per annum.

The interest is payable annually on the first day of July in each year hereafter upon presentation of the coupons therefor, the first of which is for the interest from date to the first day of July, 19. . . . , and thereafter the interest coupons are for the annual interest.

Should default be made in the first, or any succeeding payment of the principal, or in any payment of interest, by the owner of said lot, or anyone in his behalf, the holder of this bond is entitled to declare the whole unpaid amount to be due and payable, and shall thereupon have a right to collect the same and to enforce all liens and agreements which are security therefor as in said act provided.

At said city of , this day of , in the year one thousand nine hundred and

.....
City Treasurer of the City of

Said bonds shall be payable to the bearer and no mistake or error in the description in the bond of the lot assessed shall affect the validity or lien of the bond, unless the mistake or error is such that the lot cannot be identified, and in such event the holder of such bond may have the same corrected upon application to the city treasurer and the officers or board who or which made the assessment to represent which such bond is issued.

Records of bonds issued.

Sec. 5. The city treasurer shall enter in a book kept for that purpose in his office, a record of each bond issued hereunder, specifying the date of its issue, the amount for which issued, to whom delivered, its duration and a description of the lot against which issued. Payments of principal and interest on account of any bond issued hereunder shall be made to the city treasurer, who shall keep a separate account of all such payments (entering the same in the record herein required to be kept), and place the same in appropriate funds for the payment of principal and interest of the bonds on account of which paid, and who shall, upon the surrender of the coupons attached to said bond, pay to the holder thereof, or his order, the amount called for by said coupons out of the funds in his possession applicable thereto.

Validity of proceedings.

Sec. 6. Improvement bonds issued hereunder shall by their issuance be conclusive evidence of the regularity and validity of all proceedings thereto. The amount due upon any such bond shall be a lien upon the lot described in such bond superior to all other liens, charges, and encumbrances except the liens of prior assessments and of municipal, state and county taxes.

Sale of bonds. Advertisement.

Sec. 7. Improvement bonds or any number of such bonds, issued hereunder, except as otherwise provided in section 9 hereof, shall be sold to the highest cash bidder, after advertisement for bids, which advertisement shall be published for at least three times in a daily newspaper published and circulated in said city, or if there be no such daily newspaper, then such advertisement shall be published once in a weekly or semi-weekly newspaper so published and circulated; provided, however, that said bonds shall not be sold for less than par. If any bond be sold for an amount in excess of par such excess shall be paid into the general fund of the city.

Proceeds of sale.

Sec. 8. The proceeds of the sale of such improvement bonds shall be paid into the fund of the proceeding to represent assessments in which said bonds were issued.

City may advance funds.

Sec. 9. It shall be competent for the city to advance to the appropriate fund the par value of all or any part of said bonds, in which case said city shall have the same rights in respect to the enforcement and collection thereof as other purchasers. Where the city advances money as in this section provided it shall have full authority at any time to sell said bonds to reimburse itself therefor.

Holder of bond may demand sale of lot when payment is not made.

Sec. 10. Whenever, through the default of the owner of any lot or parcel of land upon which such bond is issued to represent the assessment, payment, either of the principal or of the interest, is not made when the same has become due, and the holder of the bond thereupon demands in writing, that the city treasurer proceed to advertise and sell said lot or parcel of land as herein provided, then the whole bond or its unpaid remainder, with its accrued interest, as expressed in said bond, shall become due and payable immediately, and on the day following shall become delinquent.

Procedure of sale. Prior to sale owner may pay whole amount due.

Sec. 11. Upon the application of the holder of any bond that is now or shall hereafter become delinquent as hereinbefore provided, the said city treasurer shall publish twice in a newspaper of general circulation, to be designated by him, published in the city where his office is situated, a notice which must contain the date, number, and series of the delinquent bond, a description of the property mentioned in said bond, and the name of the owner of such property (if known), and if unknown, the fact shall be so stated, the amount due thereon, and a statement that unless the amount of said bond and the interest due thereon, together with the cost of publication of such notice are paid, the real property described in said bond will be sold at public auction on a day to be therein fixed, which shall not be less than fifteen nor more than thirty days from the day of the first publication of said notice, and the place of such sale, which must be the office of the said

city treasurer. A like notice shall not less than fifteen days before the day of sale so fixed be served upon any such owner if known either personally or by depositing the same in the postoffice at such city addressed to such owner at his address if known with the postage thereon prepaid. At any time prior to the sale, the owner or person in possession of any real estate offered for sale under the provisions of this act may pay the whole amount of said bond then due, with costs, and such bond shall thereupon be canceled; but in case such payment is not made by such owner or person in possession, or by someone in behalf of such owner, or person in possession, the property subject thereto shall be sold at public auction to the bidder offering to pay the amount due on the bond with costs for the least portion of such lot or parcel of land offered for sale.

Evidence of publication of notices.

Sec. 12. The city treasurer, before the day of sale hereinafter provided for, must file with the city clerk a copy of the publication, with an affidavit of the publisher of such newspaper, or someone in his behalf, attached thereto, that it is a true copy of the same; that the publication was made in a newspaper, stating its name and place of publication and the date of each appearance in which such publication was made, which affidavit is *prima facie* evidence of all the facts stated therein.

Costs collected.

Sec. 13. The city treasurer must collect, in addition to the amount due on such bond, the cost of the publication of such notice, and fifty cents for the certificate of sale delivered to the purchaser as hereinafter provided.

Record of certificates of sale by city treasurer.

Sec. 14. The city treasurer, before delivering any certificate of sale must, in a book kept in his office for that purpose, enter the date, number and series of the bond, a description of the land sold corresponding with the description in the certificate, the date of sale, purchaser's name, the amount paid, regularly number the descriptions on the margin of the book, and put a corresponding number on each certificate. Such book must be open to public inspection during office hours when not in actual use, and he shall enter on the record of the bond the words "canceled by sale of the property," giving the date of such sale.

Purchaser's lien.

Sec. 15. Immediately on the sale, the purchaser shall become vested with a lien on the property so sold to him, to the extent of his bid, and is only divested of such lien by the payment to the city treasurer of the purchase money, including costs herein provided for, with interest thereon at the rate of one per cent per month from the date of sale.

Redemption within twelve months.

Sec. 16. A redemption of the property sold may be made by the owner of the property, or any party in interest, within twelve months from the date of purchase, or at any time prior to the application for a deed, as hereinafter

provided. Redemption must be made in lawful money of the United States, and when made to the city treasurer he must credit the amount paid to the person named in his certificate, and pay it on demand to him or his assignees.

Record of certificates of sale by recorder.

Sec. 17. On receiving the certificate of sale, the recorder must file it, and make an entry in a book similar to that required of the city treasurer, the fee for which shall be fifty cents, and on presentation of the receipt of the city treasurer for the total amount of the redemption money, the recorder must, without charge, mark the word "Redeemed," the date, and by whom redeemed, on the margin of the book where the entry of the certificate is made.

Deed to property not redeemed. Notice to owner thirty days prior to application for deed. Notice posted on property.

Sec. 18. If the property is not redeemed within the time allowed by the provisions of section 16 hereof for its redemption, the city treasurer, or his successor in office, upon application of the purchaser, or his assignee, must make to said purchaser, or his assignee, a deed to the property, reciting in the deed, substantially, the matter contained in the certificate and that no person has redeemed the property during the time allowed for its redemption; the treasurer shall be entitled to receive from the purchaser two dollars for making said deed, which shall be deposited in the city treasury for the use of the city after payment has been made therefrom for the acknowledgment of said deed; provided, however, that the purchaser of the property, or his assignee, or agent, must, thirty days prior to the expiration of the time of the redemption, or thirty days before his application for a deed, serve upon the owner or agent of the property purchased, if named in such certificate of sale, and upon the party occupying the property, if the property is occupied, a written notice, stating that said property, or a portion thereof, has been sold to satisfy the bond lien, the date of sale, the date, number, and series of the bond, the amount then due, and the time when the right of redemption will expire, or when the purchaser will apply for a deed, and the owner of the property shall have the right of redemption indefinitely, until such notice shall have been given and said deed applied for, upon the payment of the fees, penalties, and costs in this act required. In case of unoccupied property, a similar notice must be posted in a conspicuous place upon the property at least thirty days before the purchaser applies for a deed; and no deed to the property sold, in accordance with the provisions of this act, shall be issued by the city treasurer to the purchaser of such property, until such purchaser shall have filed with such treasurer an affidavit showing that the notice hereinbefore required to be given has been given as herein required, which said affidavit shall be filed and preserved by the said treasurer as other records kept by him in his office. Such purchaser shall be entitled to receive the sum of fifty cents for his service of such notice and the making of such affidavit, which sum of fifty cents shall be paid by the redemptioner at the time and in the same manner as the other sums, costs and fees are paid.

Evidence of regularity of proceedings.

Sec. 19. The deed, when duly acknowledged or proved, shall be conclusive evidence of all things of which the bond upon which it is based is conclusive evidence, and prima facie evidence of the regularity of all proceedings subsequent to the issue of the bond, and conveys to the grantee the absolute title to the lands described therein, free of all encumbrances, except the lien for state, county, and municipal taxes.

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LIST OF FORMS SET OUT IN BACK PAGES OF THIS BOOK

CHANGE OF GRADE ACT OF 1909

An act to provide for changing or modifying the grade of public streets, lanes, alleys, courts, or other places, within municipalities.

(Approved April 21, 1909. Stats. 1909, p. 1018.)

Amended 1911, Stats. 1911, p. 854.

City council empowered to change grades.

1. The city council of any city is hereby empowered to change or modify the grade of public streets, lanes, alleys, courts, or other places therein, in the manner hereinafter provided.

Resolution of intention. Publication and posting of notices.

2. Before any change or modification of grade is ordered, the city council shall pass an ordinance or resolution of intention to order such change or modification of grade. Said ordinance or resolution of intention shall state the name of, or otherwise designate the public street, lane, alley, court or other place the grade of which, or any portion thereof, is proposed to be changed or modified, and shall set forth the change or modification of grade proposed to be made. One or more public streets, alleys, lanes, courts, or other places, or portions thereof, may be included in the same ordinance or resolution of intention. Said ordinance or resolution of intention shall be posted conspicuously for two days on or near the chamber door of said city council, and published by two insertions in a daily or weekly newspaper published and circulated in said city, and designated by said council for that purpose. If no such newspaper is published and circulated in said city, such ordinance or resolution of intention shall be posted for two days on or near the council chamber door, and in two other public places in said city. The street superintendent shall thereupon cause to be conspicuously posted along all public streets, lanes, alleys, courts, or other places, or portions thereof designated in the said ordinance or resolution of intention, where such change or modification of grade is proposed to be made, at not more than one hundred feet in distance apart, notices, but not less than three in all, of the passage of said ordinance or resolution of intention. Said notice shall be headed "Notice of Change of Grade," in letters of not less than one inch in length, and shall in legible characters state the fact of the passage of the said ordinance or resolution of intention, its date, the name or other designation of the public street, lane, alley, court, or other place, or portion thereof, the grade of which is proposed to be changed or modified, and shall refer to the ordinance or resolution of intention for further particulars. He shall also cause a notice similar in substance to be published for six days in a daily newspaper published and circulated in said city, and designated by said city council for that purpose, or in cities where there is no daily newspaper, by two insertions in a weekly newspaper so published, circulated

and designated. In case there is no daily or weekly newspaper published in said city, said notice shall be posted for six days on or near the chamber door of said council, and in two other public places in said city.

Property owners may protest. Hearing of protest.

3. Any person or persons owning any real property fronting upon any public street, lane, alley, court or other place, or portion thereof, where such change or modification of grade is proposed to be made, may, within thirty days after the first publication of the notice of the passage of the ordinance or resolution of intention, or within thirty days after the first posting thereof, where no publication thereof is made, as hereinbefore provided, file a written protest with the clerk of the city council against such proposed change or modification of grade. Every such protest must contain a description of the property owned by each signer thereof, sufficient to identify the same, and if signed by more than one person, must be accompanied by the affidavit of one of the signers that each signature thereto is the genuine signature of the person whose name purports to be thereto subscribed; and in case any signature is made by an agent, there must be attached to the protest the affidavit of the agent that he is duly authorized to sign such protest. Any protest not complying with the foregoing requirements shall not be considered by said city council. The clerk of the city council shall indorse on every such protest the date of its reception by him; and at the next regular meeting of the city council after the expiration of the time for filing protests, shall present to said city council all protests so filed with him. If the city council finds that such protests are signed by the owners of a majority of the frontage of the property fronting on the public street, lane, alley, court, or other place, or portion thereof where such change or modification of grade is proposed to be made, all further proceedings under said ordinance or resolution of intention shall be stayed and barred for six months from and after the filing of such majority protests, except as hereinafter provided, unless the owners of a majority of such frontage shall in the meantime petition the same change or modification of grade to be made; but a new ordinance or resolution of intention to make a different change or modification of grade of such public street, lane, alley, court, or portion thereof, may be passed at any time.

In the event that the ordinance or resolution of intention designates any public street, lane, alley, court or other place, or portion thereof, the grade of which is proposed to be changed or modified, and there be included in said ordinance or resolution of intention any other public street, lane, alley, court or other place, or portion thereof, intersecting therewith or terminating therein, the grade of which is also proposed to be changed or modified, the change or modification of grade of such public street, lane, alley, court or other place, and of such other public street, lane, alley, court or other place or portion thereof, so

intersecting or terminating, shall not be stayed or barred by any protests, made and filed as hereinbefore provided, unless such protest be signed by the owners of a majority of the total frontage of the property fronting on all such public streets, lanes, alleys, courts or other places, or portions thereof, where such change or modification of grade is proposed to be made. If the city council finds that such protests are not signed by the owners of a majority of the property fronting on the public street, lane, alley, court or other place, or portion thereof, where such change or modification of grade is proposed to be made, or if the proposed change or modification of grade extends for a distance of not more than one block, and the grade of such public street, lane, alley, court, or other place, for at least one block thereof immediately adjacent to such block where such change or modification of grade is proposed to be made, on each side thereof, has already been established, or if the proposed change or modification of grade extends for a distance of not more than one block, at the end of a public street, lane, alley, court or place, and the grade thereof for at least one block thereof immediately adjacent to such block has already been established, the city council shall thereupon fix a time for hearing such protests not less than ten days after the meeting of the council at which such time is so fixed and shall cause notice of the time and place of such hearing to be published for two days in a daily newspaper published and circulated in said city, or by one insertion in a weekly newspaper so published and circulated; and if no daily or weekly newspaper be published and circulated in said city, then said notice shall be posted for two days on or near the council chamber door, and in two other public places in said city; and such publication or posting shall be completed at least five days before such hearing. The city council shall hear said protests at the time and place appointed, or at any time to which the hearing thereof may be continued, and pass upon the same, and its decision thereon shall be final and conclusive. If such protests are sustained, no further proceedings shall be had under said ordinance or resolution of intention but a new ordinance or resolution of intention to make the same, or a different change or modification of grade may be passed at any time. If such protests are denied, the proceedings shall continue as if such protests had not been filed.

If no protests filed. Action of city council.

4. If no protests are filed within the time hereinbefore provided, or if protests are filed, and after hearing are denied, as herein provided, the city council shall acquire jurisdiction to order the change or modification of grade described in the ordinance or resolution of intention to be made. Having acquired such jurisdiction, the city council shall by ordinance or resolution, order the change or modification of grade to be made as proposed by and described in the ordinance or resolution of intention. Said ordinance or resolution ordering the change or modification of grade shall be published by two insertions in a daily, or by

one insertion in a weekly newspaper published and circulated in said city; or, if no such newspaper be published and circulated therein, the same shall be posted for two days on or near the council chamber door, and in two other public places in said city.

Who deemed to be owner. Work on one side of street.

5. Except as otherwise hereinafter provided the person owning the fee, or the person in whom on the day any protest or petition is filed the legal title to real property appears, by deeds duly recorded in the county recorder's office of the county in which said city is situated, shall be deemed to be the owner thereof for the purpose of this act; provided, however, that any person in possession of real property as the executor, administrator, trustee, guardian, or other legal representative of the owner, or any person in possession of real property under written contract of purchase duly recorded, shall be deemed to be the owner thereof for the purposes of this act. In the case of property held by tenancy in common, if any co-tenant sign a protest under this act, only the proportionate share of the frontage thereof represented by his interest therein shall be counted in determining the amount of frontage represented by such protest. In the event that the change or modification of grade proposed by the ordinance or resolution of intention is only on one side of any public street, lane, alley, court or other place, or portion thereof, only the owners of the real property fronting on the side of such public street, lane, alley, court or other place, or portion thereof where such change or modification of grade is proposed to be made, shall be entitled to make or file a protest under the provisions of this act. If the grade of any public street, lane, alley, court, or other place, or portion thereof, has been heretofore, or shall be hereafter changed or modified, nothing in this act contained shall be construed to prevent any subsequent change or changes, modification or modifications of grade of any such public street, lane, alley, court or other place, or portion thereof.

Proof of publication of any notice made by affidavit.

5a. Proof of publication of any notice required by this act shall be made by affidavit, as provided in the Code of Civil Procedure, and proof of the posting of any such notice shall be made by the affidavit of the person posting the same, setting forth the facts regarding such posting. It shall be the duty of any officer who is required by this act to have any notice published or posted, to obtain and file in his office the affidavit or affidavits in proof thereof; provided, that his failure so to do shall not affect the validity of any proceedings under this act. Any such affidavit so filed shall be prima facie evidence of the facts therein stated regarding such publication or posting. [New section, approved April 10, 1911. Stats. 1911, p. 854.]

Definition of phrases.

6. The following words and phrases, where used in this act, shall have the following meanings:

1. The terms "municipality" or "city" include every incorporated city, city and county, or other corporation organized for municipal purposes.

2. The terms "city council" and "council" include any body or board in which by law is vested the legislative power of any city.

3. The terms "clerk" and "city clerk" shall include any person or officer who shall be clerk of the city council.

4. The term "superintendent of streets" includes any officer or board whose duty it is by law to have the care or charge of streets, or the improvement thereof, in any city. In any city where there is no superintendent of streets, or no such board, the legislative body is hereby authorized to designate some other officer to perform the duties imposed by this act on the superintendent of streets, and all the provisions hereof applicable to the superintendent of streets shall apply to the officer so designated.

Which acts are not affected by this act. Act liberally construed.

7. This act shall in no wise affect an act entitled "an act to provide for work upon streets, lanes, alleys, courts, places and sidewalks, and for the construction of sewers within municipalities," approved March 18, 1885, or amendments thereto; or an act entitled "An act to amend an act (entitled) "An act to provide for work upon streets, lanes, alleys, courts, places, and sidewalks, and for the construction of sewers within municipalities," approved March 18, 1885, by adding thereto certain new and additional sections, to provide the mode of carrying into effect certain provisions of said act relative to changing grades," approved March 31, 1891, or amendments thereto, or any other acts on the same subject; but is intended to and does provide an alternate system of proceedings for changing or modifying the grades of public streets, lanes, alleys, courts, or other places in municipalities; and it shall be within the discretion of the city council of any municipality to proceed in making any such change or modification of grade, either under the provisions of this act, or under the provisions of said acts hereinbefore mentioned, or amendments thereto; but when any proceedings are commenced under this act, the provisions of this act, and of such amendments thereto as may be hereafter adopted, and no other, shall apply to all such proceedings, and any provisions contained in said acts, or in any acts in conflict with the provisions hereof, shall be void and of no effect as to the proceedings commenced under the provisions of this act. The election of the city council to proceed under the provisions of this act shall be expressed in its ordinance of intention to order any change or modification of grade. The provisions of this act shall be liberally construed to promote the objects thereof. This act may be designated and referred to as the "Change of Grade Act of 1909."

Act effective immediately.

8. This act shall take effect immediately.

CARLISLE'S

STREET IMPROVEMENT LAWS OF CALIFORNIA

Edited by
Wm. J. Locke, Executive Secretary
League of California Municipalities.

This valuable hand book containing in full ten of the leading street acts of California is published every two years when changes are made to conform with the amendments as passed by the Legislature. Late decisions of our courts on important matters in dispute are also included thereby making this book of inestimable value on all interpretations of law in connection with street matters.

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Conforming with the Improvement Bond Act of 1915 as amended (Section 14) for entering the amounts of principal and interest due each year on each unpaid assessment for the duration of the bond issue. This record will facilitate making out your real estate assessment roll each year, and the law provides that these assessments and interest should be collected and handled in the same form and manner as your real estate taxes.

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This record is one in which can be permanently filed, cancelled or matured bonds and coupons in their proper sequence. The record can be furnished in either loose leaf or bound form, and the bonds and coupons as pasted in are so arranged that at an instant glance an accurate check can be made on all unpaid bonds or coupons.

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CARLISLE'S FORMS *for* STREET WORK

FORMS FOR USE UNDER "IMPROVEMENT ACT OF 1911"

Form

- S-100 Resolution Ordering Plans and Specifications.
- S-101 Resolution Adopting Plans and Specifications.
- S-102—Resolution of Intention (Sheets 1 and 2). Notes to Form S-102 (Sheet 3).
- S-103 Affidavit of Publication.
- S-104 Notice of Improvement.
- S-104A Notice of Improvement (Cardboard form for posting).
- S-105 Affidavit of Posting Notices of Improvement.
- S-106 Resolution Overruling Protests.
- S-107 Certificate of Clerk that no Protests were filed.
- S-108 Resolution Ordering the Work (2 sheets).
- S-109 Resolution Directing the Work to be Done under the Direction of the
..... Engineer.
- S-110 Resolution Directing the Assessment to be Made and Signed by the
Engineer.
- S-111 Notice Inviting Sealed Proposals.
- S-112 Affidavit of Posting.
Affidavit of Publication (Use Form S-103).
- S-113 Proposal of Bid.
- S-114 Resolution of Award of Contract.
- S-115 Notice of Award of Contract.
Affidavit of Publication (Use Form S-103).
Affidavit of Posting (Use Form S-112).
- S-116 Demand for Incidental Expenses (..... Engineer).
- S-117 Demand for Incidental Expenses (Printing Advertising).
- S-118 Contract (3 sheets).
- S-119 Contractor's Bond for Faithful Performance.
- S-120 Contractor's Bond for Labor and Material (2 sheets).
- S-121 Certificate of Engineer.
- S-122 Assessment—District Plan—Including Diagram (3 sheets).
- S-123 Demand for Incidental Expenses Incurred Since Contract.
- S-124 Warrant.
- S-125 Notice of Filing of Assessment and Time of Hearing.
- S-126 Affidavit of Mailing Notice of Hearing on Assessment.
Affidavit of Posting (Use Form S-112).
Affidavit of Publication (Use Form S-103).
- S-127 Resolution Dismissing Appeal (2 sheets).
- S-128 Contractor's Statement of Payments Received (3 sheets).

FORMS FOR USE UNDER "IMPROVEMENT BOND ACT OF 1915"

- S-129 List of Unpaid Assessments (3 sheets).
- S-130 Notice of Filing Unpaid Assessment List and of Time of Hearing.
- S-131 Affidavit of Mailing Notice of Filing Unpaid Assessment List and of Hear-
ing Thereon.
Affidavit of Posting (Use Form S-112).
Affidavit of Publication (Use Form S-103).
- S-132 Order Providing for Issuance of Street Improvement Bonds (5 sheets).
- S-133 Receipt for Delivery of Improvement Bonds.

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SUPERINTENDENT OF STREETS RECORD

(Loose Leaf Style)

After consulting various engineers and street assessment experts we have revised all of our street superintendent's forms. The valuable assistance of these men who have had years of experience, and are naturally well versed in the technicalities of street assessing, stamps the seal of perfection on all these sheets. The final approval of two street improvement attorneys has put the legal finish to our forms that will assure correctness of assessment.

TITLE

Form

- S-150 Contract.
- S-151 Contractor's Bonds for Faithful Performance and Labor and Material.
- S-152 Certificate of City Engineer.
- S-153 Assessment—District Plan.
- S-154 Assessment—Continued.
- S-155 Assessment—Concluded.
- S-156 Diagram.
- S-157 Warrant—1915 Act.
- S-158 Contractor's Statement of Payments Received.
- S-159 Contractor's Statement of Payments Received—Continued.
- S-160 Verification to Contractor's Statement of Payments Received.
- S-161 Street Superintendent's Certificate.
- S-162 Assessment—Front Foot Plan.
 - Index Sheets.
 - Blank Sheets—Border ruled.
 - Binders—Loose leaf—various bindings.

RECORD OF CONTRACTOR'S ASSESSMENT AND STATEMENT OF PAYMENTS

(Loose Leaf Style)

This special record for the contractors was originated by a street assessment expert at the suggestion of a well known contractor, and now fills the needs of a record in a compact form of all assessments and payments. Its popularity is increasing, as shown by its increasing use among contractors. Due to its loose leaf feature, entries can be made by typewriter, and the sheets when filled are bound in a small black cloth binder.

TITLE

Form

- S-170 Assessment.
- S-171 Warrant—1915 Act.
- S-172 Contractor's Statement of Payments Received.
- S-173 Contractor's Statement of Payments Received—Continued.
- S-174 Verification to Contractor's Statement of Payments Received.
 - Blank Sheets—Border ruled.
 - Black Cloth Binders—Loose leaf.

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(Including the 1925 amendments)

embracing the provisions of the State Constitution, sections of the Penal Code, Political Code, Civil Code and Code of Civil Procedure, together with special statutory acts relating to public highways, roads, bridges, and condemnation proceedings therefor, such as the

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Acquisition and Improvement Act of 1925;
Act providing for county aid in improvement of streets in municipalities;

County Street Opening Act of 1923;
Joint Highway District Act;

Act providing for improvement of streets whether partly or wholly, within or without the municipality, forming exterior boundaries thereof;

Acts relating to bridges, gravel beds;
and other

Acts relating to the repair, improvement and laying out of public roads, streets, and highways.

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